

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

**AGENDA**

Honolulu Ethics Commission  
**January 20, 2016 – 11:30 pm**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the December 16, 2015 Meeting.
  - B. Nomination and Vote for Chair and Vice Chair for Calendar Year 2016.
  - C. Executive Director and Legal Counsel's Administrative Report.
    - 1. Reports from Staff Members.
    - 2. General Statistics: Complaints and Requests for Advice as of the end of last month.
    - 3. Additional Workload Statistics.
    - 4. Current Fiscal Year Issues.
    - 5. Fiscal Year 2017 Budget.
    - 6. Ethics Training Program.
    - 7. Minutes of the February through June 2015 Commission Meetings.
    - 8. Sunshine Law Training for Commission Members.
    - 9. Report on the Ethics Commission's Proposed Charter Amendment Before the Charter Commission, and Other Proposals Affecting the Ethics Laws.
    - 10. Annual Reports.
    - 11. Gift Guide Newsletter.
    - 12. Staff's Priorities for FY16 – FY17.
  - D. For Discussion: Potential Amendments to Commission's Rules of Procedure, Including Contested Case Pre-Hearing and Hearing Procedures.
  - E. For Discussion: Potential Changes to the Commission's Guidelines on Gifts.
- III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on

questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

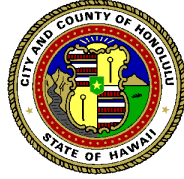
- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Motion to Approve the Minutes of the Executive Session of the December 21, 2015 Meeting.
- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Consider the Independent Investigator's Report of Commission Office Conditions, Including Management, Personnel and Procedures.
- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Processing Ethics Complaints Against Certain City Agency Personnel.
- D. For Action: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Request to Permit Staff to Communicate with a Non-Staff Person Regarding Certain Ethics Matters.

#### IV. ADJOURNMENT

ETHICS COMMISSION  
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ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: January 20, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
William Shanafelt, Investigator III  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Gordon Pang, Star-Advertiser

Absent: Laurie A. Wong, Associate Legal Counsel (ALC)

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE JANUARY 20, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

The Ethics Commission members had received a copy of the Open Session Memorandum from the EDLC, dated January 15, 2016. Vice Chair Lilly called to order at 11:34 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the December 16, 2015 Meeting.



**Commissioner Amano moved to approve the minutes of the December 16, 2015 meeting. Commissioner Silva seconded. All in favor, and the motion carried.**

B. Nomination and Vote for Chair and Vice Chair for Calendar Year 2016.

Vice Chair Lilly announced he is a holdover member until further notice.

Commissioner Yuen asked the EDLC if there was a policy to wait on elections until new appointed members come aboard. The EDLC answered that the Ethics Commission Rules of Procedure required that every calendar year, the Commission nominates and votes for a new Chair and Vice Chair. The Commission can either postpone or vote today. The EDLC informed the Commission that there were no updates regarding new appointments of members from the Mayor's office.

Commissioner Yuen commented he would like to keep it as is until the new appointed members come aboard.

Commissioner Amano commented she would like to have the elections today because the Commission needs full leadership.

Commissioner Yuen stated that the leadership can continue its current status. Commissioner Amano argued the Commission has only one person, who is Vice Chair Lilly taking the role as Chair as well.

With their busy schedules, both former Chair Chen and Vice Chair Lilly coordinated and prioritized what needed to be done. For the future, Vice Chair Lilly stated that the Chair needs to be responsible for everything.

Commissioner Amano agreed in general, but the Commission's responsibilities go beyond the normal at this time. She continued the Commission needs two people with great communication skills.

Commissioner Silva asked to proceed with the elections.

The EDLC stated the floor was open to nominations.

Commissioner Silva nominated Vice Chair Lilly as Chair and Commissioner Amano as Vice Chair.

Commissioner Amano nominated Commissioner Marks as Chair and Vice Chair Lilly to continue as Vice Chair until further update on the new appointees.

The EDLC asked if there any more nominations. The Commission had none.

The EDLC announced the nominations:

Vice Chair Lilly and Commissioner Marks as Chair  
Vice Chair Lilly and Commissioner Amano as Vice Chair

The Commission confirmed.

The EDLC opened the floor to voting:

For Chair:

Vice Chair Lilly: Two (2) votes; Commissioners Silva and Yuen

Commissioners Marks: Four (4) votes; Commissioners Marks, Suemori, Amano,  
and Lilly

For Vice Chair:

Vice Chair Lilly: Four (4) votes; Commissioners Marks, Suemori, Amano, and  
Yuen

Commissioner Amano: Two (2) votes; Vice Chair Lilly and Commissioner Silva

The Commission confirmed Commissioner Marks as Chair and Vice Chair Lilly to  
continue in his position.

C. Executive Director and Legal Counsel's Administrative Report.

1. Reports from Staff Members.

Chair Marks asked the Commission if they had a chance to read the Open Session  
Memo, and the Commission confirmed. Chair Marks asked the Commission if they had any  
questions to the staff.

Chair Marks asked Investigator Shanafelt how many investigations he was  
conducting. Investigator Shanafelt answered in the attachment (Open-2), he listed 17  
investigations. Currently, he has four (4) that he was working actively on and has at least thirty  
(30) cases assigned to him. He explained there was a priority list, but when a complainant calls  
to follow-up on the status, he has to read the case file in order to respond.

Chair Marks asked Investigator Shanafelt, from his prior experience, was the  
workload here higher, or more complex or super complex. Investigator Shanafelt explained his  
background working in different agencies in Texas, where there were 15 investigators each  
working on 80 cases, and that was unmanageable. He concluded that, with his limited  
experience, handling a similar number of complaint investigations at the Commission is  
unmanageable. From those experiences, he prioritized by knocking out the easiest or the oldest  
cases. Before she left the agency, former Investigator Letha DeCaires referred five (5) cases to  
him to work on with her transfer investigative report.

Commissioner Suemori asked was there a list of pending cases in the office.  
Investigator Shanafelt stated there was, that he did not print out an entire list, but he can always

go back to the list. Investigator Shanafelt explained there was a log that Staff records for every request for advice and complaint that comes in.

Commissioner Suemori asked if Investigator Shanafelt knew, along with the rest of the office, how many pending complaint cases there are. Investigator Shanafelt answered he does not have a number because he was not working on all the complaint cases at this time but could refer to the Inquiries Log to obtain the total number.

Commissioner Suemori asked how Investigator Shanafelt prioritized complaint cases for review. Investigator Shanafelt stated the EDLC gave him a list of factors for how to prioritize the cases. Commissioner Suemori asked if they were prior to coming in or cases that are pending. Investigator Shanafelt answered both. Commissioner Suemori asked are the cases pending given higher priority. Investigator Shanafelt answered no, he would evaluate the priority based on the factors on prioritizing given in the memo. He explained the office has an Inquiries Log, which shows the requests for advice and complaints. When he started, Ms. DeCaires would go in and work on the pending cases. Both Ms. DeCaires and the EDLC would guide him on how to review a case, and then Ms. DeCaires would go over each case with him.

Vice Chair Lilly further explained that the shared log tracks each request for advice and complaint case, who was assigned to this case, and status, etc.

Commissioner Suemori then asked of the pending cases, who has the whole list to make sure that the cases are reviewed. The EDLC answered that all cases are listed in the Inquiries Log and he looks at the list at least once a month to see what's open. The EDLC further explained that priority does not depend solely on the date when the matter was opened. The priority also depends on the seriousness of the alleged misconduct and other factors.

Commissioner Suemori asked the EDLC if the priority of cases change every month. The EDLC answered not every month, but it would change if a case becomes more urgent. Commissioner Suemori stated that, based on the relative priority, some cases go onto the back burner.

Chair Marks asked the Commission if they have any questions for Legal Clerks Parker and Bigornia. The Commission had none.

Chair Marks stated that there were additional statistics that Legal Clerk Bigornia passed out. The EDLC apologized and explained that in the Open Session Memo, there were two Open 3 reference. He further explained the statistics was the second "Open-3," and was referenced in page 4. In prior meetings, these statistics were used before and also used in budgeting purposes and workload.

Vice Chair Lilly asked when you say "Open-1" or "Open-2," how do we know what that was other than looking at it because the attachments were not mentioned in the agenda.

The EDLC explained that the attachments were referenced in the Open Session Memo.

Chair Marks and Commissioner Lilly said they like Dropbox.

Commissioner Suemori stated Dropbox is good for some, but she does not have printer capability. Vice Chair Lilly explained that documents can be accessible on the screen. Commissioner Suemori stated she does not have a laptop.

Vice Chair Lilly suggested re-formatting how the meeting materials link to the attachments. Staff should note on the agenda itself which attachments belong to each agenda item. When a Commission member locates the agenda in Dropbox, the attachment will state the Commission meeting date, the agenda item and the title of the document. As a result, the member will be able to see the attachments that are relevant to the agenda item for the upcoming meeting.

Chair Marks moved to have the Commission give her authorization to contact a law student for an interview to work as an intern to the Commission for an interview, and she will be the contact person. She would like to see a survey looking at State Ethics Commission, the Office of Disciplinary Counsel, and all of the counties' rules to do a comparative analysis and to come up with a draft of proposed rules. Then forward his draft to the EDLC and/or the ALC for review. This will also relieve some of the EDLC's and the ALC's work.

Commissioner Suemori seconded the motion.

Because Chair Marks' motion was not noticed on the agenda, Deputy Kam explained to the Commission that it could first move to have the agenda amended to add the motion to the agenda. If it is added to the agenda, the EC may vote on it because it is not a motion that impacts significant rights of others.

**Vice Chair Lilly moved to amend the agenda to add Chair Marks' motion. Commissioner Amano seconded the motion. All in favor, and the motion carried unanimously.**

Commissioner Amano moved to invite Chair Marks' motion as stated. Commissioner Suemori seconded the motion.

The EDLC informed the Commission that there will be no available space in the office for the intern to work. Chair Marks' confirmed the intern will not be working in the office.

**All were in favor to hire an intern, and the motion carried unanimously.**

The EDLC asked the Commission if the rules review applied to the Pre-Hearing and Hearing rules or all rules. Chair Marks' answered it was the "Rules of Procedure." The EDLC asked if the Commission was thinking of re-doing all the rules. Chair Marks and Commissioner Suemori answered they were not sure. Chair Marks explained was to do a survey for comparative analysis of all the different agencies. The EDLC wanted to clarify because Staff does not have the ability to use subpoenas or conduct discovery between the filing of

Notice of Alleged Violation (“NOAV”) and the Hearing. The EDLC has instructed Staff to postpone submitting NOAVs until the rules regarding subpoenas were clarified.

Chair Marks’ stated that the intern will be assigned to draft potential rules based on best practices after looking at all the different agencies’ rules. The EDLC asked the Chair if he can pass his and the ALC’s research on to him. Chair Marks’ requested to send their research to her.

Commissioner Amano asked the Commission that Chair Mark’s will be the designating contact and spokesperson for the Commission on this issue. The Commission agreed.

Chair Marks’ asked the Commission if they have any questions for the EDLC. The Commission had none.

Chair Marks asked Deputy Kam when the Commission received both agenda and the EDLC’s report, does the Commission need to be publish the agenda and report to the public. Deputy Kam answered that the open session meeting materials should be available for the public to review.

The EDLC informed the Commission that Staff would upload to the website the agenda and the open session memo and its attachments for the public to review.

Chair Marks stated that the EDLC should provide a report on the following for each meeting: Staff reports, statistics, budget (both current and upcoming fiscal years), and ethics training reports. The EDLC added that quarterly email guide and staff priorities will also be included.

**[Gordon Pang, Reporter from Star-Advertiser entered]**

Reporter Pang introduced himself to the Commission.

Commissioner Amano appreciated the Staff for putting together the minutes from February to June 2015. She suggested if the minutes can be in summary fashion versus being in verbatim.

Legal Clerk Parker explained to the Commission that during that time, the office was swamped. She sends out the audio recording to be transcribed. When the transcription was finished, the ALC reviewed and summarized them. That’s why it looks verbatim.

Chair Marks asked the EDLC if the Office of Information Practices had given him a written report on the requirements of the Sunshine Law regarding minutes. The EDLC answered that the ALC went to the training session, so he does not have it in hand.

Chair Marks moved on to the Charter Commission (“CC”). She asked the EDLC if the Charter Commission has sent him a letter specifically asking him to present information.

The EDLC answered that the CC set up a Permitted Interaction Group (“PIG”) at its January 15 meeting to focus on amendments regarding ethics law and organization. On January 19, the EDLC received a phone call from CC and Ethics PIG member Kevin Mulligan.

During their phone discussion, Mr. Mulligan brought up the various issues regarding the salary setting process for the EC’ lawyers, budget independence and EC member selection. He asked that the EDLC assist in providing them information about possible amendments. The EDLC told Mr. Mulligan that the EC would have to review the various proposals before making any specific statement on the ethics proposals, other than the one the EC submitted to the CC. The EDLC stated that aiding the CC would help ensure that the CC was provided accurate information about the benefits and disadvantages of the proposed changes. Whether the EC makes a statement regarding the specific amendments is a separate matter.

Chair Marks asked the EDLC if the CC has separate counsel. The EDLC answered that they have three or four COR deputies, but was not sure who they are or what their scope of work is.

The EDLC asked Deputy Kam if Deputy Mayeshiro is assigned to the Ethics PIG. Deputy Kam answered he does not know, but confirmed that there are three or four COR deputies assigned to assist the Charter Commission.

Chair Marks stated that she does not think that the Commission should take a stand on the Inspector General proposal.

Chair Marks stated that the Commission should agree with the budget independence issue, but not how the selection process should be changed,.

Vice Chair Lilly stated how changes in EC member selection are made is a policy decision outside of the EC’s authority, but he believed the EC may take a position on amendments that provide increased independence to the Commission that allows the Commission to be more effective. For example, when the Prosecuting Attorney, who had been appointed by the mayor, was supposed to investigate and possibly prosecute the mayor in the Kukui Plaza case. Because of that conflict, this lead to a Charter amendment requiring the Prosecuting Attorney to be elected, so that the office could conduct independent investigations. The Commission investigates City officials and employees. The extent to which the EC becomes more independent will give the EC more credibility and independence to take action. The concept of being more independent is a good thing, but how that is achieved, depends on the policymakers. From his standpoint, he would like to be able to tell the EDLC and the Charter Commission that the EC supports efforts to be more independent, but will leave the specific amendments up to the CC.

Chair Marks asked Vice Chair Lilly if he wants to make a motion.

**Vice Chair Lilly moved that the Commission support efforts for them to become more independent. Commissioner Amano seconded the motion.**

Commissioner Suemori expressed she likes this idea but also believes in “checks and balances” by the appointing authority to monitor the EC.

**Chair Marks asked for further questions. The Commission had none. All were in favor of Vice Chair Lilly’s motion, and the motion carried unanimously.**

Vice Chair Lilly reiterated his motion by stating that the Commission’s position is to direct the EDLC to convey to the Charter Commission that the Commission is in favor of provisions that would increase the independence of the Commission.

Commissioner Suemori stated no more, no less, no elaboration, and if they want an elaboration, they’ll just have to second guess it.

Commissioner Amano stated a question: does that umbrella fall over the idea of appointing authorities or do we not intent to go to the issues of who appoints Commissioners? Vice Chair Lilly stated that it would be up to the CC. Commissioner Amano asked if their statement addresses the issue of appointments because they need to be clear on that. Vice Chair Lilly answered, it doesn’t because for example, one of the proposals, every member is appointed by different agencies and entities. He concluded that this would create some kind of independence, but that would be up to the CC.

Commissioner Amano stated when they direct the EDLC to say, “The Commission supports any endeavors that make it independent,” we have to be clear this is not construed as a comment on appointed board and commission members. Vice Chair Lilly clarified that the Commission would not comment on how we get there or how we’re appointed, that’s for the CC to decide. Commissioner Amano stated that we need to make that clear, unless our statement includes that.

Chair Marks asked whether the EC meant to comment on how the appointment process might work. Commissioner Suemori stated that she’s okay with that.

Vice Chair Lilly stated that it was clear to the EDLC. Commissioner Amano stated that the Commission was making this statement that the Commission wants independence, and arguably independence can come from having a different way to appoint Commissioners, was that what the Commission was saying. She continued since our discussion was “no, we’re not making a comment on appointments” that would be up to other people. In conclusion, the Commission commented that anything that supports the independence of the Commission to do its work is supported by them.

Commissioner Amano asked on a practical matter, we have so much work to do, how can we dispatch the EDLC to do work for the CC? The EDLC replied the matters before the CC that would affect the Charter and the EC should be given high priority. In 2005, the EDLC raised the issue having budget independence before the CC, but the issue has not been resolved.

Chair Marks stated from the EDLC's point of view, it might help the EC to help the CC, so that the CC might look favorably on budget independence. The EDLC added, also the salaries proposal.

Chair Marks asked the EDLC what he would do. The EDLC planned on talking to the Honolulu City Auditor to see if the budget process used for his office, which was similar to the one proposed for the EC, works well.

Chair Marks asked what research he would expect to do regarding the Oakland Public Ethics Commission. The EDLC replied that he will take an hour or two discussing the budget independence and member selection with his counter-part in Oakland, and then report back to the CC's PIG.

Chair Marks asked whether the CC's PIG asked the EDLC to look into those issues. The EDLC replied yes, he was looking at about three hours of work, including putting things into writing to send back to the PIG.

Chair Marks agreed that Commissioner Amano has a legitimate point about taking more work. Mr. Mulligan asked the EDLC whether he can check with his counter-part if the Oakland approach works. The CC wants to help the EC achieve more independence, but needs to know whether there were practical solutions. The EDLC explained how the Honolulu City Auditor has a level of budget independence that was similar to one of the proposals for the EC.

Commissioner Amano summarized that the EDLC has heard the Commission's policy discussion and should make the decisions he believes are proper. She added that the EDLC has often come to the Commission saying that he and Staff were over-loaded with work. She concluded that the Commission should defer to the EDLC to make the work priority decisions he has to make.

The EDLC appreciated the clarification.

Commissioner Amano stated that it was the EDLC's call to the degree to which he will be involved with the CC. Chair Marks said she could understand the PIG asking the EDLC to get in touch with another ethics office about the process there.

Chair Marks asked the Commission if they have any further questions in this topic. The Commission has none.

Chair Marks asked the Commission if there have any questions on the EDLC's report.

Commissioner Amano requested that the agenda items dealing with the EC's Rules of Procedure and Gift Guidelines be tabled under old business, since the intern will be providing additional information on the former for us. Chair Marks agreed.



Chair Marks added that she wants to see Staff send out the quarterly newsletter. Commissioner Suemori asked when the launch date is. The EDLC replied no later than February 15.

Chair Marks instructed that it should be one page in bullet points. Vice Chair Lilly also wants to include the contact information. Commissioner Suemori added to put in any cartoon that is not copyrighted, put those in.

**Commissioner Amano moved to exit open session and enter into executive session. Commissioner Suemori seconded the motion. All in favor, the motion carried unanimously.**

- D. For Discussion: Potential Amendments to Commission's Rules of Procedure, Including Contested Case Pre-Hearing and Hearing Procedures.

No discussion was had.

- E. For Discussion: Potential Changes to the Commission's Guidelines on Gifts.

No discussion was had.

III. EXECUTIVE SESSION SUMMARY (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

Staff was excused for Agenda Items III. A – D.

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Motion to Approve the Minutes of the Executive Session of the December 21, 2015 Meeting.

**The minutes were passed unanimously.**

- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Consider the Independent Investigator's Report of Commission Office Conditions, Including Management, Personnel and Procedures.

The Commission decided to hold a special meeting on February 1, 2016 at 11:30 a.m in executive session. The Commission requests to have Human Resources' counsel from the Department of Corporation Counsel present, which Chair Marks understands might be Duane Pang. Deputy Kam stated that he will arrange the counsel's presence.

The EDLC asked the Commission if they want Staff or COR to prepare the agenda. The Commission answered the Staff.

- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Processing Ethics Complaints Against Certain City Agency Personnel.

Commissioner Amano has been designated to represent the Commission in handling all procedural matters to obtain an investigator regarding complaints against certain city agency personnel.

The Commission has created a Permitted Interaction Group consisting of Commissioner Amano and Vice Chair Lilly to confer with the Managing Director regarding obtaining funding for Commission work.

- D. For Action: Pursuant to HRS Sec. 92-5(a)(2) (a)(4) and (a)(8), Request to Permit Staff to Communicate with a Non-Staff Person Regarding Certain Ethics Matters.

The Commission denied the request because of the person is not an employee and there could possibly be violations of the confidentiality law.

In an adjudicative matter, the Commission authorized Chair Marks to send a letter to Counsel in a pending case.

#### IV. ADJOURNMENT

**Commissioner Suemori moved to adjourn the meeting. Commissioner Amano seconded. All were in favor, and the motion carried.**

The meeting adjourned at approximately 2:37 p.m.

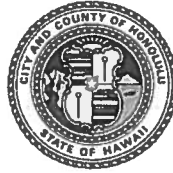
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**February 1, 2016 – 11:30 am**  
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2016 FEB -5 PM 12: 26

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA  
Honolulu Ethics Commission  
**February 11, 2016 – 11:00 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

I. CALL TO ORDER

II. NEW BUSINESS

- A. For Discussion and Action: Modification of Personnel Evaluation Form for Executive Director and Legal Counsel.

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; or HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.)

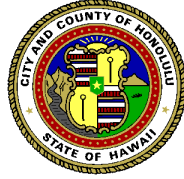
- A. *Continued from the February 1, 2016 Meeting* For Discussion: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4) Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee, and to Consider the Independent Investigator Report of the Commission Office Conditions, Including Management, Personnel and Procedures.
- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(4) Issues raised in the Memorandum dated January 8, 2016 to Charles Totto, Executive Director and Legal Counsel, Honolulu Ethics Commission from Deputy Corporation Counsel Duane W.H. Pang, Department of the Corporation Counsel.
- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to provide the status regarding the retention of an independent ethics investigator required due to a conflict of interest.

IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: February 11, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
William Shanafelt, Investigator III  
Duane W.H. Pang, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Ernest Nomura, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)

Absent: Laurie A. Wong, Associate Legal Counsel (ALC)  
Lisa P. Parker, Legal Clerk III

Stenographer: Kristine Bigornia, Legal Clerk I

**MINUTES OF THE FEBRUARY 11, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

The Ethics Commission members received a copy of the Open Session Memo, dated February 8, 2016. Chair Marks called the meeting to order at 11:00 a.m.

II. NEW BUSINESS

Chair Marks announced that the meeting was not a regular meeting.

- A. For Discussion and Action: Modification of Personnel Evaluation Form for Executive Director and Legal Counsel.

Chair Marks started discussing Vice Chair Lilly's evaluation form from the U.S.S Missouri in an excel worksheet. She also mentioned she forwarded emails to the Commission from the EDLC to gather evaluation forms from the Police, Fire, and Liquor Commissions, and to also establish a Permitted Intermitted Group ("P.I.G.").

Chair Marks asked the Commission if they wanted to discuss or make a motion.

For discussion, Vice Chair Lilly stated he does not think the current system was broken, but not user-friendly. He explained the form should have a numerical grade and input from all the Commissioners on different categories of what the EDLC is being evaluated on in excel. Under each Commissioner's name on the excel worksheet, will be giving a grade and would be able to discuss on the different items. Then, the excel worksheet will be forwarded to the Chair to summarize in one evaluation report. Vice Chair Lilly continued to explain that the evaluation on excel can keep the prior year's evaluation.

Chair Marks stated the issue would be the items on the evaluation. She continued having it on excel would be a good idea, but would also like to see what the other Commissions in the county does their evaluation.

Vice Chair Lilly sent the U.S.S Missouri excel evaluation to the EDLC to modify as appropriate. The EDLC stated that he removed what was not necessary for his evaluation, which was not very much because of duplication. The EDLC stated he didn't really change things very much. It was more to separate the appropriate categories, and certainly if the Commission has other potential factors that they want to look at. Another thing was if the items should all weigh the same rate or not. The EDLC concluded if the Commission wanted Staff to retrieve the Police, Fire, and Liquor Commissions evaluations, he will request a blank copy from each of the Commission for their review.

Vice Chair Lilly stated that the Commission does not need a P.I.G., only to review it.

The EDLC informed the Commission that Staff was working on gathering the materials for the February 17, 2016 Ethics Commission meeting, but will try to get them to the Commission by then.

Chair Marks asked the Commission if this was agreeable. The Commission confirmed.

Commissioner Amano asked if the Commission can include Staff's input, to have them review the instrument as well, by going forward. Vice Chair Lilly asked on the form. She answered yes since "we're doing it all the way," and that the Staff can contribute because they have different insights.

Vice Chair Lilly stated that this form is for the Commission to evaluate the EDLC, and the EDLC evaluates the Staff.



Commissioner Amano suggested, by going forward, the EDLC will be evaluated by Commission and Staff. Chair Marks agreed that Staff should have some input. Commissioner Amano stated that its common in this kind of organization, all the stakeholders get to give their input in some committee or person, and then delivers the message.

Chair Marks added that if the Commission was changing the forms for the EDLC, then maybe evaluation forms for Staff should be considered.

The EDLC stated the Commission can do that, but Staff is partial Union. If the Commission will be evaluating the Staff, they must comply with what the Union requires, which was really simplistic. The EDLC gave an example that the Union only allows to answer “satisfactory” or “unsatisfactory,” nothing “above satisfactory.”

Chair Marks asked if the EDLC was using a form from the City. The EDLC answered yes, except for the ALC. The ALC’s evaluation form came from COR for the Deputies, and then adapt to what the Ethics Commission’s requirements.

Chair Marks stated that the Commission should look at all of them.

Commissioner Yuen stated that it is a good idea, but the evaluation from the EDLC to the Staff needs to be modified to reflect the different type of work. Chair Marks agreed.

Chair Marks stated if they are stuck with what DHR provides, then that’s what it is, but if anything else, that might be Legal Clerks Parker and Bigornia and Investigator Shanafelt.

Commissioner Silva asked if the Commission will be evaluating the Staff. Chair Marks answered no, just reviewing the forms.

The EDLC stated tried to get the flesh out, for a better evaluation is to include things, such as allowing to explain, and that takes care of most of the things that you normally feel you could talk about.

Commissioner Yuen asked the EDLC if other commissions have Staff provide their input. The EDLC answered he does not know. He explained with the Police Commission (“PC”), their Charter is a little different with a specific duty described in the Charter. He knew reviewing the form there is no 360, unless the PC wants to hear from Staff. The EDLC informed the Commission that he can find out. Commissioner Yuen stated that it might be a factor of why they are not doing that, and there is a reason why.

Chair Marks stated that it is worthwhile to review other Commissions’ evaluation forms. She instructed the EDLC to include this item to the February 17, 2016 agenda, going forward. The EDLC informed the Commission, that Staff has already submitted the agenda for filing, but it can be included to the agenda “EDLC’s evaluation.”

Deputy Pang stated that the Commission has to announce this as a continuation of this matter, and it does not technically need to be on the agenda for the next meeting.

Chair Marks announced that the Commission will continue discussion on the EDLC's evaluation in the February 17, 2016 meeting at 11:30 a.m.

Chair Marks announced to the Commission that she will not be present for the February 17, 2016 meeting, and Vice Chair Lilly will conduct the meeting.

**At 11:13 a.m., Commissioner Silva moved to exit Open Session and enter Executive Session. Commissioner Yuen seconded the motion. All were in favor, and the motion carried unanimously.**

Chair Marks asked everyone, but Counsel to the Commission, to leave the conference room.

III. EXECUTIVE SESSION SUMMARY (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; or HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.)

**Commissioner Suemori moved to exit executive session and enter open session. Commissioner Silva seconded the motion. All were in favor, and the motion carried unanimously.**

Chair Marks announced fifteen minutes before executive session ended, Vice Chair Lilly and Commissioner Yuen left the meeting.

Chair Marks reported:

A. *Continued from the February 1, 2016 Meeting For Discussion Pursuant to HRS Sec. 92-5(a)(2) and (a)(4) Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee, and to Consider the Independent Investigator Report of the Commission Office Conditions, Including Management, Personnel and Procedures.*

The Commission reached a unanimous decision, and a letter will be prepared to inform the necessary parties.

B. For Discussion: Pursuant to HRS Sec. 92-5(a)(4) Issues raised in the Memorandum dated January 8, 2016 to Charles Totto, Executive Director and Legal Counsel, Honolulu Ethics Commission from Deputy Corporation Counsel Duane W.H. Pang, Department of the Corporation Counsel.

No decision had been made.

- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to provide the status regarding the retention of an independent ethics investigator required due to a conflict of interest.

There were three proposals. A P.I.G. had been established consisting of Vice Chair Lilly and Commissioner Amano, and that they would be meeting with the Managing Director next week to move forward.

**Commissioner Suemori moved to approve the February 1, 2016 executive session minutes. Commissioner Silva seconded. All were in favor, and the motion passed unanimously.**

#### IV. ADJOURNMENT

**Commissioner Suemori moved to adjourn the meeting. Commissioner Silva seconded. All were in favor, and the motion passed unanimously.**

The meeting adjourned at approximately 1:14 p.m.

ETHICS COMMISSION  
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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

**AGENDA**  
Honolulu Ethics Commission  
**February 17, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the January 20, 2016 Meeting.
- B. Executive Director and Legal Counsel's Administrative Report. (Written)
  - 1. Staff's Priorities for FY16 – FY17.
  - 2. Work Reports from Staff Members. (2-17-16 Agenda Item II.B.2.b, OPEN-1 and 2-17-16 Agenda Item II.B.2.c, OPEN-2 (CONFIDENTIAL))
  - 3. General Statistics: Pending Complaints Requiring Investigation and Requests for Advice as of the End of Last Month.
  - 4. Additional Workload Statistics. (2-17-16 Agenda Item II.B.4, OPEN-3)
  - 5. Current Fiscal Year Budget Issues.
  - 6. Fiscal Year 2017 Budget.
  - 7. Ethics Training Program.
  - 8. Report on the Ethics Commission's Proposed Charter Amendment Before the Charter Commission, and Other Proposals Affecting the Ethics Laws. (2-17-16 Agenda Item II.B.7, OPEN-4 and OPEN-5)
  - 9. Gift Guide Newsletter.
  - 10. Quarterly Newsletter.
- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel. (2-11-16 Agenda Item II.A, OPEN-1)

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the January 20, 2016 Meeting.

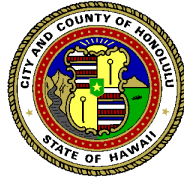
- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Consider the Independent Investigator's Report of Commission Office Conditions, Including Management, Personnel and Procedures.
- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Regarding Processing Ethics Complaints Against Certain City Agency Personnel.
- D. For Discussion: Pursuant to HRS Sec. 92-5(a)(4), Regarding Issues Raised in the Memorandum Dated January 8, 2016 to Charles Totto, Executive Director and Legal Counsel, Honolulu Ethics Commission, from Deputy Corporation Counsel Duane W.H. Pang, Department of Corporation Counsel. **(2-17-16 Agenda Item III.D, EXEC -1)**
- E. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status as to the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest.
- F. For Discussion and Action: Pursuant to HRS Sec. 92-6(a)(2), Regarding the Commission's Adjudicatory Functions, Status of Ongoing Cases and/or Prehearing Conferences.

#### IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: February 17, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
William "Bill" Shanafelt, Investigator III  
Derek Mayeshiro, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)

Absent: Hon. Victoria Marks (ret.), Chair  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Lisa P. Parker, Legal Clerk III

Stenographer: Kristine Bigornia, Legal Clerk I

**MINUTES OF THE FEBRUARY 17, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

The Ethics Commission members had received a copy of the Open Session Memo, dated February 11, 2016. Vice Chair Lilly called the meeting to order at 11:35 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the January 20, 2016 Meeting.

**Commissioner Suemori moved to approve the open session minutes of the January 20, 2016 meeting. Commissioner Silva seconded. All were in favor, and the motion passed unanimously.**

**B. Executive Director and Legal Counsel's Administrative Report. (Written)**

The EDLC announced to the Commission that there was a correction that needed to be made. He directed the Commission to look at Item 6, "FY 2017 Budget", at the first bullet point, the last line, which read "\$449,000," and that it should be, "\$49,000." The EDLC made no further corrections or additions.

**1. Staff's Priorities for FY16 – FY17.**

Commissioner Suemori referred to Page 1, regarding priorities, and asked the EDLC how many City employees would need training, and the EDLC responded that there were 9,300 employees.

Commissioner Suemori asked the EDLC if he could train all 9,300 in a year. The EDLC responded that it would depend on using the old method, and confirmed that all 9,300 City employees can be trained in a fiscal year.

Commissioner Suemori asked the EDLC how he would plan on training all the employees. The EDLC explained that there are two processes: 1) work out the Mindflash process; and 2) get funding for the Mindflash, and that this method would allow the departments to get the program out to all City employees, individually, which would then enable them to do the ethics training right at their desks.

Commissioner Suemori asked the EDLC, when he would know about the budget. The EDLC responded that it would not be any sooner than June, because staff needed help from City Council. She then asked if it could be by next fiscal year, and the EDLC confirmed and further stated that staff was hoping to start this fiscal year, but there is no money.

Commissioner Suemori asked the EDLC if all 9,300 employees would be able to complete their ethics training by June 2017, and the EDLC confirmed and further stated that it would be throughout the fiscal year. Commissioner Suemori further stated that staff should have 18 months, instead of 12 months, to train the employees. The EDLC clarified that staff would need to start in July, because that is when we will have the actual budget.

Commissioner Suemori asked the EDLC if the staff had something from now until June 2016 to train the employees. The EDLC responded that staff was getting the Mindflash program ready, and that the ALC had sent out a highlight.

Commissioner Suemori asked the EDLC how much would it cost and wanted a total amount. The EDLC confirmed that the \$6,000 was the total amount and further stated that the program is also self-tracking and that staff would not need to worry about tracking, who took the training or not, and that it is very flexible and that it modifies quizzes.



Commissioner Amano asked the EDLC if the Mindflash would be a one-shot deal. The EDLC confirmed and explained that \$6,000 is per training, because the license needs to be purchased. The EDLC further stated that staff conducts training to the employees every two years.

Commissioner Suemori asked the EDLC to explain “timely” response. The EDLC responded that there is no real definition and that in general, the average days to respond to a Request for Advice (“RFA”) is 10 days and can usually be done quicker than that because some are straight forward. For the Complaints Requiring Investigations (“CRI”), if it does not go to probable cause, the average is five months. If a case does reach probable cause and all the way to a contested hearing, the average is a year.

Commissioner Suemori asked the EDLC if it could be set in general guidelines. The EDLC stated that staff can set it, if that is what the Commission thinks is appropriate. Commissioner Suemori further stated that it would be something that the EDLC would want to have as his own guidelines so that he would have an idea of what he was doing. The EDLC then stated that it would be internal guidelines, and Commissioner Suemori responded that it’s called “Operating Procedures,” and the EDLC confirmed.

Commissioner Suemori asked the EDLC what would formulate and present a Notice of Alleged Violation (NOAV) and what would be the requirement for a contested hearing. The EDLC explained that from the staff’s point-of-view, if there is a probable cause violation and if a case is serious enough to bring to the Commission.

Commissioner Suemori asked the EDLC what would be grounds for a “serious” violation. The EDLC responded that it would be suspension without pay or termination of employment, which are realistic options. Commissioner Suemori asked if the EDLC had guidelines for the NOAV, and the EDLC confirmed that there are general guidelines and that the staff goes through the process under Rule 5 in the Ethics Commission Rules of Procedure (“ECRP”). The EDLC further stated that if staff finds probable cause and if it’s not something that should be sent over to the department, as opposed to the Commission, and then staff would present a probable cause motion to the Commission, and then a NOAV. Commissioner Suemori asked the EDLC if it would take five months, and the EDLC confirmed that five months was the average.

Commissioner Suemori asked the EDLC for clarification of, “when you formulate.” The EDLC responded it was a fancy word for “draft,” but it also means, “to do the research, to prep the factually and the legality of a case, which is then brought before the Commission. She further asked if it was the same thing as “timely responses.” The EDLC explained that the vast majority of the cases do not get to the probable cause stage, and the probable cause stage requires a lot more detailed review. Commissioner Suemori reiterated that there is a ten-day staff processing to determine probable cause, which usually takes five months under Rule 5, thereafter the EDLC would decide if it is a suspension and termination, but beyond that is CRIs, non-probable cause. She concluded that the EDLC is doing the same thing and that he would be doing his timely response, as required.

The EDLC responded that there is a semantic difference. On one hand, the discussion is about CRI's.

Vice Chair Lilly stated that they overlap, and that RFA would have been resolved.

Commissioner Suemori stated that all of this is an intake process of an operational manual and that it's a process sequential. She explained that there would be only one process for the person calling in and how it would be processed to the end.

Vice Chair Lilly agreed that it was one process.

The EDLC explained there are two bullet points, but was not suggesting that there were two different processes. He further explained that if he has 90 complaints and 80 of them are resolved in the CRI stage and don't even get to probable cause, it's worth having two different bullets.

The EDLC further stated that it was a priority statement, not a "this is how we do it" statement. Staff is trying to simply say we have these cases, we have RFA, we have CRI's and then another high priority is we got probable cause and then take it to NOAV.

Commissioner Suemori asked the EDLC what were the non-priorities. The EDLC responded that those were the top priorities and that staff had been dealing with RFAs and CRIs, and that staff tried to get rid of cases that were not within its jurisdiction, or de minimis, or did not have sufficient proof.

Vice Chair Lilly asked the EDLC if there were written guidelines or if it was his own procedure. The EDLC confirmed, and also informed the Commission that it was provided to Ms. Elento-Sneed and that staff could provide them with a copy. The EDLC explained that he was hesitant in his response since it's been so ingrained in him and that it's relatively straight forward. The EDLC further stated that in working with former Investigator DeCaires and Investigator Shanafelt, he and Ms. DeCaires were giving Investigator Shanafelt CRI's on what focus he needed, and at the same time they didn't want to give him 50 cases at one time. The EDLC informed the Commission that when Investigator Shanafelt finishes some cases, he assigns him a couple of more cases.

Vice Chair Lilly stated that the EDLC's secondary priority, the first bullet, "developing the Pre-Hearing and Hearing Process," should be a high priority, and the EDLC agreed. Vice Chair Lilly continued that he did not know how the Commission felt, but contended it should be a high priority since it impacts how staff and the Commission process the NOAV.

Commissioner Suemori commented that the all employee Ethics training program is basically "no work," and further stated that it should be at the highest priority. Commissioner Suemori added that she needed to figure out, on a day-to-day basis, what is a high priority and

what is a low priority and that conducting an all employee's ethics training should be high priority.

The EDLC explained that you cannot just "give it out," you have to give the hour training.

Commissioner Suemori then stated that she is not disagreeing, and Vice Chair Lilly asked if her clarification was for the present fiscal year. Commissioner Suemori responded that it was for the remainder of the fiscal year or for the whole fiscal year through June to 2017, and that it should be a high priority, rather than getting general and timely responses to RFAs and CRIs. She continued that the third priority would be the NOAV and Contested Case Hearings. The second priority would be implementing improvements to pre-hearings and hearings, as well as the intake process, which would be a formulation of the aforementioned priorities. Commissioner Suemori concluded that staff should have time requirements, and asked how it should be done and what would be a measurable evaluation that the EDLC was trying to prioritize, and in what order.

Vice Chair Lilly asked the Commission if they had any other thoughts.

Commissioner Suemori asked the Commission to move from the subject.

Vice Chair Lilly stated that he saw a difference between, "here are the categories of the high priorities and secondary priorities for the fiscal year," and that within in any given day, week, or month, you're going to have pass. Commissioner Silva interjected a need for flexibility. Vice Chair Lilly continued that there would be a need to prioritize, and Commissioner Suemori responded that there is a need for highest priorities for the next 18 months. Commissioner Silva added that priorities will change, and Commissioner Suemori agreed.

Commissioner Silva stated that there is definitely a need for flexibility, since the Commission is not moving forward and they can say they'll take care of certain issues within six months, but it may end up being a year before they can get to other cases. Commissioner Suemori responded that they are lucky enough to have 18 months, because looking at an 18-month calendar, until June 2017, they have no knowledge of what priorities will occur and that it is not a measurable success. Vice Chair Lilly asked if she was asking staff to provide the Commission a report on how they will fulfill and achieve those priorities.

The EDLC stated that staff can put something together, regarding time frames for the RFAs and CRIs and whether an all employee's training program could be done .

Vice Chair Lilly asked the EDLC if he would be reporting on those, and the EDLC confirmed.

Vice Chair Lilly asked the EDLC for clarification on receipt of a complaint or RFA and if it goes into the inquiries log, and whether he was able to tell the Commission, at any

given moment, how many outstanding issues staff was working on, and the EDLC confirmed. Vice Chair Lilly also asked the EDLC if the Commission would be able to know how many matters had been closed in a particular time, and the EDLC confirmed. Vice Chair Lilly further asked how many were aging (six months, three months old), and the EDLC also confirmed, as well as informed the Commission that he did not have the information, since the Department of Information Technology (“DIT”) would need to change the excel spreadsheet. The EDLC continued that the aging requires one of the Staff members to sit down and do it manually. Vice Chair Lilly asked if staff can do that because it would be valuable to the Commission. The EDLC confirmed and further stated that he had met with Chair Marks after the last meeting, and that was one of the factors staff discussed with DIT.

Vice Chair Lilly asked the Commission if they had any issues regarding the EDLC’s report, and that they had already gone through Agenda Item B.1.

Commissioner Yuen commented that the Commission needed to be careful because there is a fine line between over-seeing and governance versus micro-managing. He continued that they would need to keep in mind that the Commission can always make adjustments along the way with this amount of work.

Commissioner Suemori agreed and stated that she wants to know the measurable goals and the success goals. She further stated that as a group, the Commission had to come to an agreement on goals and priorities. Vice Chair Lilly stated that as a Commission, they should decide on the main priorities, and thereafter the EDLC can carry it out. The EDLC agreed, but he was being careful in using the term “staff priorities,” since the Commission might want to shift priorities around, depending on what’s happening.

Vice Chair Lilly stated that he wanted to have those pre-hearing procedures out as a high priority, since it would drive-out a lot of other things. Commissioner Suemori responded that it would be a second priority. Vice Chair Lilly agreed, and further stated that the pre-hearing procedures are needed before it can to a contested case hearing. Commissioner Suemori then stated that it should move from second priority to above the third highest priority, and Vice Chair Lilly and the EDLC agreed.

Commissioner Suemori asked if the EDLC could combine the timely responses, the formulating process, the pre-hearing and hearing process into an “operating manual,” to include the process for intake on how a case goes through the office, as well as the definitions of an RFA and CRI. She further stated that the case intake process is for staff to process and later for them to over-see, and that there needs to be an operation manual in writing. The EDLC responded that he would need some direction.

Vice Chair Lilly informed the Commission that unless anyone disagreed, he agreed with Commissioner Suemori and that the procedures should be number two in the highest priority. Vice Chair Lilly further stated that the ALC was working on the procedures and that it needed to get finalized as soon as possible. Commissioner Suemori stated that Vice Chair was collapsing bullet 2, bullet 3 was of highest priority, and bullet 1 was secondary. The EDLC

stated that bullet 1 in secondary is a different issue because it's looking at the rules. Commissioner Suemori stated that it was up to Vice Chair Lilly because it was what he wanted.

The EDLC stated that he needed some real specifics because it was easy to say "implements improvements," which was a very generic title. The EDLC further explained that it was made generic because there was a need to have some flexibility, but if they're talking about looking at the rules, for instance, the Commission needs to give him an example. The EDLC continued that at present, he had instructed staff not to do any NOAVs because there is no right to discovery after an NOAV is filed. The EDLC further contends that if it's a higher priority, it's easy to put it up, but does the Commission want the rules to be reviewed? Commissioner Suemori responded in agreement. The EDLC informed the Commission that the law student intern, Derek Simon, would be handling the matter. Commissioner Suemori asked if it would be completed by April, and Vice Chair Lilly responded that Derek Simon would be providing a compilation and recommendations, a that it was a very high priority.

Vice Chair Lilly asked the Commission if there were any questions regarding the EDLC's report. For Items 6 and 7, Vice Chair Lilly announced that testimony from Natalie Iwasa had been received, and that each Commissioner received a copy, and the Commissioners confirmed.

2. Work Reports from Staff Members.

No discussion.

3. General Statistics: Pending Complaints Requiring Investigation and Requests for Advice as of the End of Last Month.

No discussion.

4. Additional Workload Statistics.

No discussion.

5. Current Fiscal Year Budget Issues.

No discussion.

6. Fiscal Year 2017 Budget.

No discussion.

7. Ethics Training Program.

No discussion.

8. Report on the Ethics Commission's Proposed Charter Amendment Before the Charter Commission, and Other Proposals Affecting the Ethics Laws.

No discussion.

9. Gift Guide Newsletter.

No discussion.

10. Quarterly Newsletter.

No discussion.

- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

Vice Chair Lilly suggested deferring this item, since the Commission had received additional materials to look at. Unless the Commission wanted to discuss, he needed to review the departments' evaluation forms and the performance evaluation policy.

The EDLC informed the Commission that staff had not received the Liquor Commission's evaluation for the Liquor Control Administrator, its counter-part. Vice Chair Lilly asked the EDLC if he could scan and email to him when received, and the EDLC confirmed.

Vice Chair Lilly asked the Commission if they had any questions, and since there were none, the Commission had no further discussion.

- III. EXECUTIVE SESSION SUMMARY (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

**At 11:59 a.m., Commissioner Suemori moved to exit open session and enter into executive session. Commissioner Silva seconded. All were in favor, and the motion carried unanimously.**

At 12:05 p.m., staff left the Conference Room for the Commission to discuss Items B., C., and E. privately.

At 12:46 p.m., Staff returned to the Conference Room.

Vice Chair Lilly reported the following:

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the January 20, 2016 Meeting.

The Commission deferred the item.

- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Consider the Independent Investigator's Report of Commission Office Conditions, Including Management, Personnel and Procedures.

The Commission approved the hiring of an investigator.

- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Regarding Processing Ethics Complaints Against Certain City Agency Personnel.

The Commission deferred the item.

- D. For Discussion: Pursuant to HRS Sec. 92-5(a)(4), Regarding Issues Raised in the Memorandum Dated January 8, 2016 to Charles Totto, Executive Director and Legal Counsel, Honolulu Ethics Commission, from Deputy Corporation Counsel Duane W.H. Pang, Department of Corporation Counsel

The Commission had a discussion.

- E. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status as to the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest.

The Commission deferred the item.

- F. For Discussion and Action: Pursuant to HRS Sec. 92-6(a)(2), Regarding the Commission's Adjudicatory Functions, Status of Ongoing Cases and/or Prehearing Conferences.

The Commission deferred the item.

#### IV. ADJOURNMENT

**Commissioner Suemori moved to adjourn the meeting. Commissioner Silva seconded. All were in favor, and the motion carried.**

The meeting adjourned at approximately 12:50 p.m.



ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA  
Honolulu Ethics Commission  
March 9, 2016 – 11:30 a.m.  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

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- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

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**ORDER OF BUSINESS**

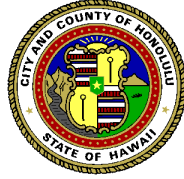
- I. CALL TO ORDER
- II. NEW BUSINESS

- A. For Decision: Whether Max Hannemann, Mayor's appointee to the Fire Commission, has a conflict of interest that would interfere with his duties as a Fire Commissioner or otherwise be in violation of Article XI, Standards of Conduct, Revised Charter of Honolulu.
- III. EXECUTIVE SESSION (The above agenda item may be partially reviewed in executive session pursuant to HRS Section 92-5(a)(4), to consult with the Commission's attorney questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.)
- IV. ADJOURNMENT

ETHICS COMMISSION  
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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: March 9, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Laurie A. Wong, Associate Legal Counsel (ALC)  
William Shanafelt, Investigator III  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
MaryJean Castillo, Commissioner, Honolulu Fire Commission  
Robert H. Lee, President Honolulu Fire Fighters Association (HFFA)  
Aaron Lenchanko, Secretary-Treasurer, Honolulu Fire Fighters  
Association (HFFA)  
Andy Fukuda, Oahu Division Chairman, Honolulu Fire Fighters  
Association (HFFA)  
Max S. Y. Hannemann, Nominee for Fire Commissioner,  
Honolulu Fire Commission

Absent: Charles W. Totto, Executive Director and Legal Counsel (EDLC)

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE MARCH 9, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:32 a.m. and asked that the record reflect that all Commissioners and Staff were present, including Deputy Corporation Counsel, Geoff Kam, as well as the members of the public, who identified themselves.

## II. NEW BUSINESS

- A. For Decision: Whether Max Hannemann, Mayor's appointee to the Fire Commission, has a conflict of interest that would interfere with his duties as a Fire Commissioner or otherwise be in violation of Article XI, Standards of Conduct, Revised Charter of Honolulu.

**Chair Marks asked the ALC to present her position on the Decision and that a Memorandum was distributed to the Commissioners.**

The ALC informed the Commission that basically her Memo laid-out all the facts, and that she interviewed several people, including Mr. Hannemann, Mr. Lee, the President of HFFA and that she also received testimony from Ms. Castillo.

Based on the fact that Mr. Hannemann had no ongoing social relationship or never had any social relationship with Union members in the past (2 ½ - 3 years since he worked for the Union), and that he had no financial interest in the Union and also resigned as President of the Hawaii Professional Fire Fighters Foundation, the ALC stated that she found no "formal" advisory opinion regarding his particular matter and that Mr. Hannemann's current interests were not enough to cause a conflict of interest since those interests were past interests.

The ALC explained in further detail the Hawaii Supreme Court case on point, Sussell v. City and County of Honolulu Civil Service Commission, in which the court held that in order to be on the civil service commission and to not have any sort of violations, they would hold the standard to be an "appearance of impropriety," and that several commissioners recused themselves because one of them had an actual conflict of interest and the other had an "appearance of impropriety," and that the Commissioner who had an "appearance of impropriety," had been a friend to Mayor Fasi for many years, had an ownership interest in the company that provided the bus service, and had also made numerous campaign donations. The ALC also stated that in comparing those types of interests which created an "appearance" in that State case, to what Mr. Hannemann has, he would be further removed and that there would most likely be no appearance of a conflict of interest, even with his former relationships with HFFA and the Foundation on the one hand and his duties as a Fire Commissioner on the other. The ALC also researched an informal Advisory Opinion by the EDLC in the past, and in that situation the deputy director was given the advice that if something came up where he participated, he should recuse himself and delegate it back up to his director to find someone else.

The Chair asked the ALC for her conclusions and recommendations, and the ALC responded that Staff recommended that the Ethics Commission approve Staff to draft an Advisory Opinion that would coincide with her Confidential Memorandum, subject to the

approval of Chair Marks, and that, specifically, the Advisory Opinion should contain the line items listed on pages 8 and 9 of the Confidential Memorandum.

**Chair Marks asked that the record reflect Commissioner Suemori's attendance at 11:39 a.m.**

Chair Marks asked if there were any questions for the ALC, and Commissioner Amano asked for clarification of the ALC's specific request to give an opinion about whether there was a conflict if the Commission would not be the confirming or appointing authority. The ALC confirmed that the City Council was the confirming authority for confirmation and that it had already gone before the full council once, but then it got referred to the Public Health Safety & Welfare Committee with Chair Menor, and that the issue came up during Mr. Hannemann's hearing because of the history with the Fire Union and that Chair Menor requested that the Commission provide a formal opinion in order for City Council to proceed with the confirmation process. Commissioner Amano reiterated that the Commission's meeting was about whether or not to issue that opinion based on the ALC's recommendation and only regarding the conflict of interest, and the ALC confirmed.

Chair Marks asked if there were any other questions and since there were none, asked for the public's testimony.

**Testimony by MaryJean Castillo:**

Ms. Castillo greeted Chair Marks, Vice Chair Lilly and the Commissioners. Ms. Castillo stated for the record that her appearance was to give personal testimony and was not attending on behalf of the Fire Commission.

Ms. Castillo referred to her submittal of a "concerned citizen's petition," with 155 signatures, and stated that serving as a Fire Commissioner for the City and County of Honolulu was truly an honorable service since it was a volunteer job with conviction, pride and dedication and believes that among their duties, the main duty as a Fire Commissioner was to also uphold the integrity and fairness in City government by selecting and evaluating the Fire Chief in a fair and unbiased manner, which would be in the best interests of the community.

Ms. Castillo further stated that she did not know Mr. Hannemann and that she did not have anything against him, however, she was offended when she heard that he said she made a remark about him. Ms. Castillo continued about Mr. Hannemann's impressive qualifications and that anybody who would endorse him would take pride with his resume, and since there might be no conflict of interest, as was previously stated, and that all his associations were in the past, she believes that the past does still affect the future.

Ms. Castillo identified the two (2) Union members sitting in the meeting and that she specified in her letter that if James Wataru is Chair of the UPW and Arnold Wong was appointed by the Mayor, and is also the Director of Government Affairs for the Ironworkers, that adding one more, even if not related to the Union but had a past relationship, in her opinion, it would be

a mistake even without a conflict, since there would be a three (3) to five (5) vote, and therefore, believes the community would not be well represented.

Ms. Castillo further stated that in 2014, the population in Honolulu alone was 992,000, and therefore, questioned why the Mayor couldn't have picked another commissioner from the community. For example a teacher or a banker, in order for the community to be well represented. She added that because of Mr. Hannemann's past HFFA relationships, how could Mr. Hannemann be unbiased. People would always question his impartiality since it's a matter of perception even if he was given the benefit of the doubt.

Ms. Castillo informed the Commission that when former Mayor Peter Carlisle appointed her, she took on the responsibility and could not close her eyes and ears, since she represented the community and not just one organization and that together with her community background and volunteer work, she truly became a grassroots community worker. She also informed the Commission that she had nothing personal against Mr. Hannemann.

Chair Marks thanked Ms. Castillo and asked if anyone had any questions. Commissioner Amano thanked Ms. Castillo for her public and community service, and Ms. Castillo acknowledged that it was a thankless job and that her objections were not personal.

#### **Testimony of Max S. Y. Hanneman:**

Mr. Hannemann greeted the Commissioners and stated that he was new to the process and this appointment was his first. Mr. Hannemann stated that he was happy to serve and was also happy the Mayor appointed him. Mr. Hannemann further stated that he read through the Charter, especially the duties of a Fire Commissioner and with the assistance of the ALC, he submitted testimony, stating that he would be objective and committed and would make sure that his duties and obligations as a Fire Commissioner would be met. Since there would be five (5) Commissioners, he assumes that he would not have the power as one (1) Commissioner to make the overall decisions. Mr. Hannemann summarizes that he was confused about his fellow Fire Commissioners, and their testimony was about grouping the commissioners as either union or management. He found nothing in the Charter or the duties that said you needed to be one or the other, but thinks it said you needed to be objective as a Fire Commissioner, and that to say you need to be on either the management or union side is the wrong way to look at it. For the past two (2) to three (3) years he worked at Hawaiian Electric, he worked in labor relations, representing management, and that he was going against the union on a daily basis and oversaw the discipline for all union employees' terminations, as well as sat with union presidents, making informed objective decisions, and that he would do the same as a Fire Commissioner. Mr. Hannemann continued that he would look at different policies, conducts or practices of the chief and that he would be objective by giving a fair assessment, while working alongside the other Commissioners.

Mr. Hannemann asked the Commissioners if there were any questions for him and that he would supplement any requested information, to what he already submitted in his written

testimony. Mr. Hannemann reiterated and made it very clear that he would be very committed to being objective in working with the other Commissioners within the capacity of those duties.

Chair Marks asked if there were any questions for Mr. Hannemann, and Commissioner Amano stated that the question before the Commissioners was whether he had a conflict of interest that would preclude his appointment by the Mayor and approved by the City Council which of course, would be decided by the Commission. Commissioner Amano further informed Mr. Hannemann that their counsel advised them that there was no existing conflict, but also examined whether there was an appearance of conflict, based on his history. The ALC's analysis gave them an opinion that there was nothing that would preclude the appointing authority, based on conflict of interest, and also advised that going forward, he would need to be aware of things that may come up, and that when it happens, or if it happens and he's appointed, he should take it seriously, make disclosures and that it was a position of public confidence. Commissioner Amano further stated that he would be given an oath, if appointed, and that the oath is a promise to do certain things, and that at the end of his term, "the face in the mirror had better say that he made that promise and kept it," and Mr. Hannemann agreed with Commissioner Amano.

Chair Marks asked if there were any other questions and since there were none, asked if Mr. Lee wanted to testify.

### **Testimony of Robert H. Lee:**

Mr. Lee greeted the Commissioners and stated that he was the President of the Hawaii Firefighters Association since 1998, and that he also retired from the Fire Department in 2010, with 36 years of service.

Mr. Lee stated that he did not have a clear understanding of why he needed to testify and how the matter got that far and why there was even a conflict. Mr. Lee testified that he did not know Mr. Hannemann prior to hiring him. Mr. Hannemann worked at the union approximately three (3) years and left on his own to get a better job and that he was very sad when he left since he was a very good and smart employee and did a lot for the union. As much as he didn't want Mr. Hannemann to leave, he was very happy for him, finding a position at Hawaiian Electric in management, and that it had been a few years since he left the Foundation. Mr. Lee further stated that Mr. Hannemann had followed the proper rules after leaving his position and again reiterated his confusion about the conflict, but believes that the issue of their Foundation may have started the conflict.

Mr. Lee continued that the Attorney Mr. Brian Ezuka helped to form their nonprofit, and that Mr. Ezuka made it very clear that the union could not control the Foundation and that they had to find individuals that were not affiliated with the union in order to run the foundation and that they could have a presence on the Foundation but they would not be the controlling factor. Thereafter, Mr. Hannemann's name came up and they asked him to be on the Foundation, and now that he left, it seemed that just his appearance from being on the Foundation was totally contrary to the reasons why they asked him to join the Foundation in the first place. After Mr. Hannemann decided to resign, it seemed that the focus was on the union, which is the

reason for his testimony, and that the conflict seemed to be more antiunion or based on Mr. Hannemann's past association with the union.

Mr. Lee further explained that since we live on an island, there tends to be many instances that you could be associated with a lot of people in government that used to work for the union. Mr. Lee concluded that the Fire Department is a one hundred percent (100%) unionized work force, which represents 2,000 firefighters across the State, as well as the Honolulu firefighters, and that all they ask of the Fire Chief and the Administration is to respect their unionized workforce and the rules that are in place. Mr. Lee continued that they have conflicts with the Fire Chief, as well as Fire Chiefs across the State at times, but it's a "check and balance" system between union and management. They are tasked to finding fair, objective and quality candidates that could sit on the Fire Commission, who would therefore be able to treat the union members fairly.

Chair Marks asked if there were any questions and Vice Chair Lilly commented that he did not perceive that there was a conflict, and that in the confirmation process, City Councilman Ron Menor raised the question of whether there was a conflict, so it caused Mr. Hannemann to ask the Commission whether he would have a conflict. Vice Chair Lilly further stated that the Commission issues advisory opinions on whether there might be a conflict, and that in no way had there been a determination or allegation that there was a conflict, and that it was merely a question.

Vice Chair Lilly continued that the Commission's counsel recommended that there was no actual conflict since Mr. Hannemann did not have any current relationship with the Union, nor was there any appearance of a conflict, which is a standard from the public that states, "what would a reasonable person from the public say," after looking at the facts and concluding that Mr. Hannemann, being on the Fire Commission would be a conflict of interest. Vice Chair Lilly concluded that being union or nonunion wasn't the issue.

Mr. Lee responded and reiterated that there didn't seem to be a conflict, but that there was concern about Ms. Castillo's testimony and what was stated in her letter, which is public record, that turned the issue into a union/nonunion issue, but more so since she was a Commissioner. Mr. Lee confirmed his agreement with Vice Chair Lilly's comments.

**Chair Marks asked if there were any other questions or if anyone else wished to testify, and since there were none, asked for a motion. Commissioner Amano moved to accept the ALC's recommendation on the Advisory Opinion relating to the matter and Commissioner Silva seconded.**

Chair Marks asked if there was any discussion, and Vice Chair Lilly wanted confirmation that they were addressing the facts on the case, because they would not know if other facts in some future case might come closer to the Sussell case, and Chair Marks agreed.

Chair Lilly confirmed his agreement that he didn't see any conflict, but he also did not want the opinion to be too broad, so that in other cases, which may have an appearance of conflict, would not be addressed at present, but could be addressed in the future.



Commissioner Amano complimented the ALC for doing a good job by using the Sussell case which sets standards or guidelines for them to evaluate appearance that is very difficult to evaluate, but looking at the standards of remoteness of time and the actual job duties, it would have to be case by case, and therefore agreed with Vice Chair Lilly.

The ALC confirmed that she could add-in some limiting language, stating that the opinion is limited to the specific facts of the case, and Vice Chair Lilly agreed. Commissioner Amano reiterated that not only in the present opinion, but in every situation, the evaluation of appearance needs to be case by case, and Vice Chair Lilly interjected, “factor of the case.”

Commissioner Yuen stated that “conflict of interest” did not only apply to Mr. Hannemann, but it applies to any Board of Directors, which is incumbent on that person to use his good judgment to determine if there is a conflict of interest, and that it should be asked of all Commissioners, including the Commission. Commissioner Yuen further stated that what may be perceived by him may be different from the Commission and the public, so that person would need to be mindful.

**Chair Marks called for the vote, and since there were neither oppositions nor abstentions, the motion carried unanimously.**

#### IV. EXECUTIVE SESSION SUMMARY

None.

#### V. ADJOURNMENT

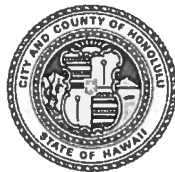
**Chair Marks asked if there was any other business, and since there were none, asked for a motion to adjourn. Commissioner Yuen so moved, Commissioner Silva seconded and all were in favor.**

The meeting adjourned at approximately 12:05 p.m.

ETHICS COMMISSION  
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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

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AGENDA  
Honolulu Ethics Commission  
**March 16, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the February 11 and February 17, 2016 Meetings.
- B. Executive Director and Legal Counsel's Administrative Report. (Written)
  - 1. Work Reports from Staff Members;
  - 2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice);
  - 3. FY 2017 Budget Status;
  - 4. Financial Disclosure Compliance Status;
  - 5. Ethics Training Program Status;
  - 6. Charter Amendments Status (Permitted Interaction Group); and
  - 7. Gift Guide Newsletter Status/Responses.
- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

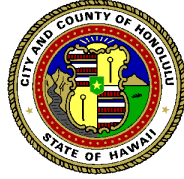
- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the January 20, February 11 and February 17, 2016 Meetings.
- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status Regarding the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest.

IV. ADJOURNMENT

ETHICS COMMISSION  
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KIRK CALDWELL  
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CITY AND COUNTY OF HONOLULU

Date and Place: March 16, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Laurie A. Wong, Associate Legal Counsel (ALC)  
William Shanafelt, Investigator III  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel

Absent: Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Michael Lilly, Esq., Vice Chair

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE MARCH 16, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

The Ethics Commission members received a copy of the March 11, 2016 Memorandum regarding the Agenda items for the March 16, 2016 meeting. Chair Marks called the meeting to order at 11:32 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the February 11 and February 17, 2016 Meetings.

**Chair Marks asked the Commission if there were any questions or discussion and, since there were none, asked for a motion to approve the minutes. Commissioner Amano so moved, Commissioner Silva seconded, all were in favor and the motion passed unanimously.**

Commissioner Amano commented that the minutes were extensive and that it would be easier if the minutes were summarized. The ALC agreed as long as the minutes reflected the discussion to the extent that Staff could summarize them.

Chair Marks recalled that at one point the EDLC mentioned that there was an OIP opinion about it, but did not know the extent of that opinion, however at the very least there needs to be an indication of whether a motion was made, the substance of the motion and how the vote was taken, as well as a discussion that could be summarized. She then asked the ALC to check on the OIP opinion, and the ALC acknowledged that she would.

COR Deputy Geoff Kam informed the Commission that OIP is generally in favor of a full disclosure and transparency, as much as possible, and that their opinions tend to tilt aggressively to that side. Deputy Kam continued that COR tends to agree that it could be summarized; the substance of motion, the votes, some of the discussion and thinks there's an OIP opinion to the effect that minutes may not be verbatim, so long as it captures the main points of discussions.

The ALC responded that several years ago when she first came on board and prior to hiring the Legal Clerk III, she went to an OIP Sunshine Law training and was told that the way the minutes had been done, did not meet the Sunshine Law Requirements since in the past the minutes were cut and pasted from the EDLC's Open Session Memo, and there was no reflection of any discussion. Thereafter, the minutes became more specific and worked further towards a more comfortable middle-ground.

Commissioner Silva commented that he would like to have a summary and also mentioned that if anyone wanted to know details of the discussion, they could listen to the "taped" minutes.

Commissioner Amano asked if the minutes were prepared by Staff, or whether they were sent out for transcription, and the ALC confirmed that the minutes are usually prepared by Staff, but that there were a few meeting minutes that were transcribed by a transcriptionist, because Staff was working on cases and were behind in transcribing minutes.

Commissioner Yuen commented that they should rely on Staff's judgment, but at minimum the minutes should contain the motions, decisions or critical discussion, and upon review via email, if a critical discussion was missing, the Commissioner could always inquire.

**B. Executive Director and Legal Counsel's Administrative Report. (Written)**

**1. Work Reports from Staff Members.**

Chair Marks reminded the ALC and Staff that the Commission requested, not only an Exhibit reference, but also a label, since it would have been easier for them to identify in Dropbox. The ALC asked for clarification and if the electronic name of the document could be listed, and Chair Marks and Commissioner Amano agreed.

Chair Marks asked Staff if they had any questions or clarification and the Legal Clerk III asked if they wanted the same reference on the agenda. Chair Marks responded that it should be done in the Dropbox exhibit items, and Commissioner Amano agreed.

## 2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice).

Chair Marks informed the Commission that she gave Commissioners Suemori and Amano a timesheet form, which included a case number, and showed it to Investigator Shanafelt. She further explained that he might want to use their form but if he could list “c” for “complaint” or “r” for “request for advice” and also to separate the case number. Commissioner Amano suggested that the “word document” timesheet be put on “Excel” instead.

Commissioner Suemori asked for more clarification about complaints, as well as the processes and functions of the case log and the assignment of EC numbers. The ALC and Investigator Shanafelt provided explanations, in detail, to the Commissioners.

Commissioner Suemori also asked if the log was able to compute the “time” spent on each case, and the ALC confirmed that there’s no type of function to date, but timekeeping could be done. Commissioner Amano recommended that it be on Excel, and the ALC confirmed that she was already keeping her time on Excel. Commissioner Suemori and the ALC reconfirmed about Staff being able to count the old cases.

Chair Marks clarified that the log did not add aging and then asked Legal Clerk Bigornia to explain her manual search of the aging cases. Legal Clerk Bigornia explained that she chose to start on fiscal year 2012, since that year was complete, and that she tested only a “chunk” of that fiscal year, and it was not done on an Excel spreadsheet because there were too many formulas.

The ALC added that she went through the entire master index and then directed the Commissioners to look at Exhibit D and the outstanding cases that existed, and further explained in detail of her findings, as well as responded to questions by Chair Marks. Investigator Shanafelt also responded to questions by Chair Marks, regarding cases given to him by either the EDLC, the ALC or the previous Investigator.

Commissioner Suemori asked for clarification on the process to close a case, and Investigator Shanafelt provided an explanation in detail to the Commission, as well as informed them about his use of a tickler system.

Commissioner Suemori further asked if the entire office had a continual office tickler for everyone's cases or whether the cases were counted at the end of the year and that a daily log was necessary in order for the City Council to see a need for another investigator. Investigator Shanafelt responded with a detailed explanation to the Commission.

Commissioner Yuen made a request to Investigator Shanafelt if he should indicate on his timesheet the actual time spent in doing his timesheets, and Commissioner Amano also informed him that timesheets were necessary in order to justify for the budget or the need for other resources. Investigator Shanafelt explained to the Commission that he had been trying to find out the best way to record his time and concluded that by recording and/or taking notes was the most efficient way, and Commissioner Amano agreed. Commissioner Yuen further stated that the Commission should welcome input from Staff, in order to improve the process as they go along.

Chair Marks asked the ALC for clarification of "referred to another agency," referenced in the log, and whether it meant the case was closed. The ALC confirmed and further explained in detail about the "color coding" fonts on the log.

Commissioner Suemori asked why a case would be referred back to the agency, and the ALC explained, in detail, the normal practice of the office and the EDLC.

Commissioner Suemori further asked how Staff kept track of the number of cases per the color coding on the log, as well as the opening and closing of cases. The ALC responded in detail and also explained that closing cases was done only when they had time.

Commissioner Silva asked if there were "statute of limitations," and the ALC and the other Commissioners agreed that those cases would not toll the statute of limitations. The ALC then asked the Commissioners what they would want the Staff to do regarding those types of cases, and Commissioner Amano responded that they should wait until the timesheets were reviewed and thereafter make a determination and recommendation.

Chair Marks informed the Commissioners to view the log that Legal Clerk Bigornia had on her computer and further stated that it couldn't be printed-out, since there was an enormous amount of information. Chair Marks further stated that the log doesn't age or keep track of any other information, except for the day the case was opened and to whom it was assigned to, as well as whether it went to another agency or was recommended that it be closed, and that only a manual count would determine the age of a case.

Chair Marks informed the Commission that there were 68 open cases. Commissioner Suemori wanted clarification about whether there were any other cases that wasn't in the log and the ALC confirmed that every case was listed on the log. Investigator Shanafelt further stated how he handled or processed each case assigned to him since the first day on the job, and Commissioner Suemori confirmed her understanding.

The ALC directed the Commission to Exhibit "D", on the last page, and explained that there were different ways cases could be initiated and sometimes it could be

external or internal and further stated that there are “anonymous initiated unassigned” cases (10), “internal initiated unassigned” cases (8) and “third-party initiated unassigned” cases (11). The ALC further stated that in her opinion and depending upon the severity, “third-party identified initiated unassigned” cases should also be listed, since it is actually someone who contacted Staff from the outside and that Staff should respond to them with a status update. Chair Marks asked if the third-party cases could be identified, and the ALC confirmed and further stated that she could go back and research and inform the Commission. Chair Marks then responded that Investigator Shanafelt could assist the ALC.

Commissioner Amano stated that the Commission should be setting policy on whether certain cases could be worked on by the Ethics Commission, since Staff does not have the capacity to take on those cases and that they may need to look at other jurisdictions and then determine if Staff should be increased and whether to have a separate litigation section that could handle the prosecution of cases.

Chair Marks asked if there were any other questions, and Commissioner Silva commented that he had suggested that the litigation cases be turned over to the Prosecutor’s office. Investigator Shanafelt agreed and commented on a few matters he referred back to HPD.

Commissioner Suemori asked about RFA (Request for Advice) cases and prioritizing cases, and also whether there was an easier way to identify them. The ALC explained that the log had the capabilities to search for a “type of case.”

### 3. FY 2017 Budget Status.

Chair Marks informed the Commission that there was a “hold” on unspent money on each quarter that had passed, because the City overall was over budget and didn’t know if that quarterly “hold” would be lifted or not and that if it’s lifted, the budget would be “okay,” with about couple hundred dollars in the “black,” but if it’s not lifted, then it would be in the “red.” Chair Marks directed the Commission to the last page of Exhibit “E,” and stated that in order to save money, the subscription for Westlaw would be cancelled and Mindflash training for the City employees’ would be postponed until next fiscal year, and that the “hold” would end on June 30.

Chair Marks reported that she appeared before the Budget Committee and, in preparation for that meeting, she noticed that there was a vacant lawyer position, which was probably the EDLC’s effort to try and create an assistant executive director, so that the ALC would be promoted into that position so that the money would be used from the existing position (ALC’s) to fund it, but there wasn’t any intention to actually create a new vacant lawyer position, since no position description had been prepared.

Chair Marks also informed the Commission that she asked Dennis Kodama of DDC (Department of Design and Construction) to include another office space for more growth, and Commissioner Amano confirmed that it was a good idea. Chair Marks confirmed that the Budget Committee Chair was Ann Kobayashi and that she was very cordial. The ALC informed



the Commission that Chair Kobayashi questioned the square footage, and Chair Marks stated that all the Commissions with the City were to be moved to Kapalama Hale and that some rents would go either up or down and that there might be a savings when it's balanced out. Chair Marks further stated that Councilmember Trevor Ozawa questioned why the rent would be higher than the current rent, but was then informed that the plan may be for the City to purchase the building. The ALC further informed the Commission that Councilmember Kimberly Pine asked that the Corp Counsel, Donna Leong, provide an explanation or detailed report about the Kapalama Hale move. Chair Marks informed the Commission that Dennis Kodama of DDC provided her with a "draft" floor plan.

Commissioner Yuen commented that the move to Kapalama Hale would be good cause for a complaint by the public because of back payments and high rents that the City was paying, especially for a vacant building, and Commissioner Silva agreed.

Chair Marks informed the Commission that she unofficially heard that the move would take place by the beginning of the fiscal year, July 1.

Chair Marks directed the Commission to Exhibit "F", Budget and Fiscal Services' budget report and that the budget for the next fiscal year included four percent (4%) anticipated raises.

Commissioner Yuen asked the ALC about the vacant lawyer position, and the ALC responded in detail about the creation of the salaries for the EDLC and ALC and that there were problems with the Charter, and that was the reason for working on a proposed Charter amendment in order to put all attorneys under the Salary Commission. The ALC also explained, in detail, about the reasons for the proposed upgrade in her position from an SR-26 to an EM-3, as well as the reason for the new lawyer position that had no job description. The ALC concluded that if there's no money then there can be no position, and Commissioner Suemori responded that there needed to be an assistant lawyer position before an assistant executive director position.

#### 4. Financial Disclosure Compliance Status.

Chair Marks informed the Commission that Legal Clerk Bigornia prepared a report, which was shown in Exhibit "A". The ALC commented that there was a decrease in delinquent filers, from the time the report was sent out. The outstanding Board and Commission members' financial disclosures were down from seven (7) to four (4). Legal Clerk Bigornia informed the Commission that Staff from the Managing Director's office was assisting in following-up with the outstanding filers, and that seven (7) notice of violations had been sent out. The ALC also reported that the employees outstanding was down from seven (7) to zero (0).

Commissioner Suemori requested that she would prefer that the Managing Director's office send out reminders to the Mayor's office and Commissions, and Legal Clerk Bigornia responded that they do assist Staff in sending out reminders by the January 31 deadline, and if there's no compliance by the late filers then the City Council Chair and the

Managing Director would send out another reminder, via our office. Commissioner Suemori responded that she would prefer that reminders be sent to the Board and Commissions by the Mayor, by the January 31 deadline, and that the employees' reminders be sent out by the Managing Director, and if there's no response by March 31, then notice of violation letters should go out.

#### 5. Ethics Training Program Status.

The ALC thanked everyone who completed the "test" training Mindflash, and that there were a few issues that she needed to "tweak," i.e., volume, etc., but did receive positive feedback, however, due to insufficient funds she was unable to complete the program until next fiscal year beginning July 1. Chair Marks suggested that the ALC could still work on thoughts and anything else she may want to add or "tweak," based on feedback.

#### 6. Charter Amendments Status (Permitted Interaction Group).

Chair Marks asked if there were any questions or status, and since there were none, moved on to Item 7.

#### 7. Gift Guide Newsletter Status/Responses.

Chair Marks asked if any feedback was received from the Supervisors of the City, and the ALC responded that the EDLC did send out the Newsletter to all City Directors and their Secretaries, who were asked to distribute to Staff, and that she only received two (2) emails asking for clarification.

Chair Marks asked the ALC about her 1-sheet newsletter, and the ALC responded that it was only her suggestion to the EDLC, who asked for her thoughts on his flyer and when she responded and attached a copy of her newsletter with a colored format and that he did not respond, but rather sent out the flyer, which did include other suggestions that she had made.

The ALC asked the Commission if they had any ideas for the newsletter and if there was anything they wanted to focus on or highlight, and Chair Marks suggested to include those complaints or requests for advice, which stood out more than others to be addressed in training or in a newsletter. The ALC agreed that it could be done by using the stats.

The ALC also reported that by next year in the very beginning of January, when the third quarter newsletter goes out, a reminder of the due date for Financial Disclosures will be included. Commissioner Suemori suggested that the reminder should go out in the second quarter newsletter.

Commissioner Amano asked if there was a national ethics newsletter, and the ALC responded that there is a Federal U.S. office of government ethics. Commissioner Amano also asked if they reported egregious or bad cases from other jurisdictions and that it would be a "learning from a distance," and the ALC responded that she was not sure but would look into it, and was also in agreement. Chair Marks suggested that Staff look into a subscription to a

government newsletter.

- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel

Chair Marks informed the Commission that Commissioner Lilly and the EDLC were working on the evaluation forms and asked if the Commission had any input. Commissioner Amano requested that the matter be deferred until Commissioner Lilly can attend a meeting, and Commissioner Suemori also requested that the matter be deferred until April.

**Chair Marks asked if there were any other matters to be discussed and since there were none, asked for a motion to adjourn and to go into executive session. Commissioner Yuen so moved and Commissioner Silva seconded. All were in favor and the motion passed unanimously.**

#### IV. EXECUTIVE SESSION SUMMARY

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the January 20, February 11 and February 17, 2016 Meetings.

The approval of the minutes will be deferred to the next meeting.

- B. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status Regarding the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest.

Chair Marks reported that there was discussion about procurement for an independent ethics investigator and the status of the office.

#### V. ADJOURNMENT

**Commissioner Yuen moved to adjourn the meeting. Commissioner Silva seconded. All were in favor, and the motion passed unanimously.**

The meeting adjourned at approximately 12:47 p.m.

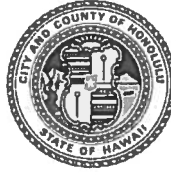
ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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CITY CLERK  
C & C OF HONOLULU

2016 APR 14 PM 1:55

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA  
Honolulu Ethics Commission  
**April 20, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the March 9 and March 16, 2016 Meetings.
  - B. Executive Director and Legal Counsel's Administrative Report. (Written)
    - 1. Work Reports from Staff Members.
    - 2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice).
    - 3. FY 2016 Budget Status.
    - 4. FY 2017 Budget Status.
    - 5. Financial Disclosure Compliance Status.
    - 6. Ethics Training Program Status.
    - 7. Charter Amendments Status re Ethics Laws.
    - 8. Electronic Protection of Commission Records.
    - 9. 2015 Service Efforts and Accomplishments Report and National Citizen Survey for Honolulu.
    - 10. Status of Review of Ethics Commission Rules of Procedures.
    - 11. Office Flow Charts per February 29, 2016 letter from Marks to Totto.
    - 12. Motion to Approve Open Session Minutes of the March 9 and March 16, 2016 Meetings.
  - C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.
- III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the January 20, February 11, February 17, and March 16, 2016 Meetings.
- B. For Discussion and Action:
  - 1. Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status Regarding the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest;
  - 2. Pursuant to HRS Secs. 92-5(a)(2) and (4), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee, and to Consult with the Commission's Attorney on Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities; and
  - 3. Regarding the Formation of a Permitted Interaction Group Under Hawaii Revised Statutes § 92-2.5(b) to Review Proposals and Negotiate the Position of the Commission Regarding the Evaluation and/or Dismissal of an Officer or Employee of the Commission.

#### IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: April 20, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Peter B. Carlisle, Counsel for EDLC  
Nick Grube, Civil Beat  
Cory Lum, Civil Beat

Absent: William Shanafelt, Investigator III

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE APRIL 20, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

The Ethics Commission members received a copy of the April 15, 2016 Memorandum regarding the Agenda items for the April 20, 2016 meeting. Chair Marks called the meeting to order at 11:32 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the March 9 and March 16, 2016 Meetings.

**Chair Marks asked the Commission if there were any additions, corrections or deletions and, since there were none, asked for a motion to approve the minutes. Commissioner Yuen so moved, Commissioner Silva seconded, all were in favor and the motion passed unanimously.**

- B. Executive Director and Legal Counsel's Administrative Report. (Written)

1. Work Reports from Staff Members.

The EDLC responded to Commissioner Yuen's question that over the last several meetings there was a request to make sure that certain topics were covered by a written report so that the Commission could ask clarifying questions. Commissioner Yuen was satisfied with the EDLC's response.

2. General Statistics Complaints and Requests for Advice as of the end of Last Month.

Chair Marks asked the EDLC if he had statistics regarding his report on Request for Advice & Complaints, and if there was an easier way to compare the 2014 and 2015 statistics at the present point in time. The EDLC responded that we could manually count each year, but that it would be easier to get a gross number count. It takes significant time to count and compare three (3) different years and breaking down the count of complaints and requests for advice. The EDLC also stated that staff is still working with DIT for help.

3. Pending Complaints Requiring Investigation and Request for Advice.

Chair Marks asked if there were any questions, and since there were none, stated that the EDLC informed the Commission that he does not provide names of people until after a probable cause hearing, since it was confidential, and the EDLC confirmed. Chair Marks continued that the first time she ever saw a person's name was in the attached report, given by the EDLC and that the ALC never mentioned any names. The EDLC responded that the ALC did indicate a name by using an initial and...Chair Marks interjected "XYZ", and the EDLC confirmed. Chair Marks asked the EDLC if he changed his policy by spelling-out names. The EDLC responded that the name was used so the Commission would be able to see what cases were a significant portion of the workload. The EDLC felt that the ALC had marked some "XYZ" cases as having been referred to another agency. It is more accurate to state another agency has requested information.

Commissioner Suemori asked why the "XYZ" matters were complaints if it's only asking for information from another agency, and the EDLC explained that the complaint was received by the Ethics Commission and the information was requested by another agency. Commissioner Suemori then asked if every request by another agency would be an open complaint, and the EDLC confirmed.



Commissioner Suemori asked about several entries that appear to be identical, but listed as individual complaints. Commissioner Suemori asked for more clarification regarding the individual complaints and why they couldn't be combined into one complaint, and Vice Chair Lilly and the EDLC responded that each complaint were different issues, however, agreed that the complaints could be consolidated if the facts were the same and if certain criteria were met. The EDLC continued that in one of the cases in particular, the complaint was of different nature, so those complaints were kept separately, in order for the complaints to reflect what was being done and extent of the workload. The EDLC further stated in detail more reasons for having separate complaints, and Vice Chair Lilly responded that the log was designed so that complaints are logged-in sequentially, as they come in, and reconfirmed that complaints could also be combined or consolidated later.

Chair Marks asked why there were fifteen (15) complaints unassigned, and that they were unassigned as long as sixteen (16) months and three (3) weeks. The EDLC explained that if a case was not assigned it would mean it would be his responsibility and that no investigation had been initiated yet. He also stated often the older cases presented weak facts or not a serious violation relative to other cases. Chair Marks asked if the EDLC had other cases assigned to him, and the EDLC confirmed.

Commissioner Suemori asked if the EDLC when he would be able to work on the sixteen (16) month old case, and the EDLC responded that there is no strict policy, but at the end of two (2) years and if staff was not able to do conduct an investigation or refer the case, the complainant would be informed that staff just didn't have the resources to investigate the matter.

Commissioner Yuen stated that sometimes the complaint would be withdrawn, and the EDLC further explained in more detail about matters in which complainants withdrew their cases. Commissioner Yuen added that sometimes the cases are overcome by events, and the EDLC agreed, and that sometime they work themselves out.

Chair Marks asked the EDLC if he kept track of phone calls, and the EDLC confirmed that all the phone calls requesting advise or making complaints are given EC numbers and logged into the Inquiries Log, with a short description, and also gave an example of an HPD phone call complaint. The EDLC confirmed that the description would be listed as "oral advice," as opposed to an email request.

The EDLC informed the Commission that the six (6) requests for advice, that were pending, had been closed.

Chair Marks asked if there were any questions, and Commissioner Yuen asked if the responses to the requests for advice were in writing, like an email, or just a phone call. The EDLC explained that it would depend on whether the request was based on few straight forward facts. If so, then it would not be necessary to require a written request. However, if the request is more complex, such as from someone who would be leaving the City and later came back to the City and was also involved in matters with who they worked for, they are asked to write an email description. The EDLC would respond with questions. Commissioner Yuen concluded

that it takes only a few minutes to make a complaint but it may take the EDLC several days work to address the complaint. The EDLC explained in further detail about the reasons for requests for advice in writing and concluded that requests for advice can be addressed more quickly than complaints.

4. FY16 website hits through 3/31/16: 4,319

There was no discussion.

5. FY 16 New Employee Ethics training through 3/31/16: 548

There was no discussion.

6. Financial Disclosure Compliance.

There was no discussion.

7. Fiscal Year 2016 Budget Issues.

There was no discussion.

8. Fiscal Year 2017 Budget.

There was no discussion.

9. Report on the Ethics Commission's Proposed Charter Amendment Before the Charter Commission, and Other Proposals Affecting the Ethics Laws.

Chair Marks asked if there was any update with the Charter Commission, and the Vice Chair commented that one of the problems was the position level for the ALC was limited, and asked the EDLC if the adopted draft would avoid that situation. The EDLC confirmed and further stated that the ALC would be an exempt attorney and not an SR-26.

Commissioner Amano asked the EDLC if he was satisfied with the salaries approach by the Charter Commission, and the EDLC confirmed he was. The EDLC further stated that CC member Paul Oshiro researched the matter carefully. The EDLC also informed the Commission that his only concern was that the EDLC salary would be set at an excluded managerial compensation plan, which would mean that DHR (Department of Human Resources) would come in to assess, but at present the EDLC salary is an EM-7, which has a broad range of \$80K to \$140K, which would certainly cover the range of the salaries of comparable attorneys at Corporation Counsel.

Commissioner Amano thanked the EDLC for his work and Vice Chair Lilly commented that going to the Charter Commission solved the issue and the salary issues were the reason for going to them in the first place.

10. 2015 Service Efforts and Accomplishments Report and National Citizen

## Survey for Honolulu.

The EDLC explained that the SEA Report was a project conducted by the City Auditor and that initially it was a brief report of each City agency, but in the last 2 or 3 years they've used an additional survey, the Commission was then given these very broad statements about the trust in government. The EDLC does not think that the Ethics Commission is the sole determinant of whether or not people trust government.

### 11. Work Flow Charts for Requests for Advice and Complaints Requiring Investigation.

Chair Marks informed the Commission about the rules survey that compared and contrasted the procedural rules of the Ethics Commission, Hawaii County, Maui County, Kauai County and State of Hawaii ethics agencies, as well as the Office of Disciplinary Counsel, Department of Commerce and Consumer Affairs' Administrative Rules, Department of Land and Natural Resources' Rules, Civil Rights Commission's Procedural Rules, Department of Health's Procedural Rules and the Honolulu Liquor Commission's Procedural Rules.

Chair Marks asked the EDLC to explain the Honolulu Ethics Commission's probable cause procedure. The EDLC responded that in talking with Les Kondo of the State Ethics Commission, the State equates its "charge" with the finding of probable cause. Commissioner Marks then asked if the State gets approval by their Commission, and the EDLC confirmed. The EDLC continued that the concern he had in drafting the rules was to make it clear what steps must be taken to comply with Rule 5 to reach decisions on probable cause. He thinks Rule 5.8 is a "good faith" safeguard so that the system cannot be abused. The EDLC further stated that the requirement of having the EC decide probable cause ensures the process used is fair and states the rights for subjects of investigations.

The EDLC informed the Commission that he only perused Mr. Simon's work, but he did notice that he may have missed an important issue. Chair Marks asked for the page number, and the EDLC responded that it was on Page 13 of the survey, entitled, "Complaints Notification to the Respondent." However, Rule 5.9 was not mentioned, which is critical because if the Commission finds probable cause, the EC is mandated to file a Notice of Alleged Violation (Notice), unless it's a de minimis case. The EDLC continued that the Notice states the facts and law as well as the rights and responsibilities for the subject who is being notified.

Chair Marks asked if potential respondents' would be notified if complaints had been filed before the filing of a Notice. The EDLC responded that sometimes they are, and sometimes they are not notified. The EDLC noted that, if there is a concern for potential witness or document tampering, the subject may not be informed. Also, if the case is factually or legally weak it may be closed without the subject being made aware of the investigation. The EDLC further explained that if probable cause was found and if there had been a written complaint, the written complaint is attached to the Notice with the identity of the complainant removed.

Vice Chair Lilly asked the EDLC for clarification about complaints in writing, and referred to Page 7 of the Rules and Ordinance, which was designed for complaints that did not need to be initiated in writing. The EDLC explained that each county and the State, as well as the Honolulu Ethics Commission, allow for complaints by the public or by the ethics agency.

The EDLC continued in detail on other reasons and procedures from past cases and that, before a Notice is approved and filed by the Commission, it would need to follow the basic steps given in Rule 5.

To Vice Chair Lilly's question the EDLC confirmed that the complaint does not need to be written and referred to Advisory Opinion 2006-1. The EDLC explained in detail that 2006-1 dealt with an oral complaint, requiring the staff and EC to decide whether the EC had jurisdiction over oral complaints. Thereafter it was made very clear in the Ordinance in 2011 that the Commission could entertain oral complaints, written complaints or could open-up an investigation based on any information.

Chair Marks asked for clarification because ROH Sec. 3-6.4 discusses the EC staff, suggesting a distinction between the Commission and Commission staff. She also asked whether the Rules allow for delegation of duties to the EDLC and the staff. The EDLC responded that there is a general delegation of duties in the Rules. Chair Marks stated that it was Rule 1.14 states the general delegation. The EDLC responded that the preliminary investigation states that it be conducted under the control of the legal counsel, as referred to in Rule 5.7, and that it is clear that the scope of the preliminary investigation is up to the legal counsel. The EDLC continued that when staff determines probable cause, it makes a recommendation to the Commission so the EC ultimately makes the probable cause decision.

Chair Marks referred the Commission to ROH Sec. 3-6.7, "The employee or officer whose conduct is the subject of the complaint shall have an opportunity to respond in writing...after receiving a copy of the complaint." She asked whether the EDLC was interpreting the complaint to mean the initial written complaint, and the EDLC confirmed. Chair Marks continued that in Rule 5.6, it says, "you may send a copy...", and that "may" and "shall" did not go together. The EDLC stated that the Commission could always decide on clarification, and thought it would be important for the staff to have the chance or ability to determine the timing when the subject receives a complaint given that the subject may interfere with collecting evidence and witness statements. Chair Marks responded that the Commission and staff will need to review the matter.

Chair Marks asked if there were any questions, and since there were none, she asked the Commission to refer back to Open 3 of the Open Session Memo, regarding pending complaints and requests. **REFER BACK TO ITEM 3 FOR FURTHER DISCUSSION.**

**[The EDLC interjected that no names should be used while in Open Session.]**

After discussion of Item 3, Chair Marks came back to Item 10 regarding the flow charts and asked if there were any questions. Commissioner Suemori responded that they were helpful.

Chair Marks responded that she thought the flow charts were a good start, however, she was looking for more details so that staff would know what they are supposed to do, and that it looked like a lawyer's point of view with no concrete information. Commissioner Suemori asked who would answer the phone, and what if the Legal Clerk answered. The EDLC responded that the Legal Clerk would transfer the call to him, and if not she would take a message and sometimes the message would be detailed, and that it has been a practical office

procedure. The EDLC further explained that because the office was blessed with experienced investigators, a checklist was not proposed in the flow chart, however, they do have checklists and that they may use it if they choose to use it.

Commissioner Suemori asked if the phones were set-up on a rotating system, and the EDLC was not clear, however, the calls would go to him first and then go to the Legal Clerk.

Chair Marks concluded that part of the purpose of the flow charts was to have the staff and investigator be informed of what is going on and what they should be doing, and in some offices they have their clerical staff screen calls. The EDLC responded that he does not have the staff screen calls since he thinks that the callers need to be listened to by trained personnel (attorneys or investigators) and in order to be able to give immediate feedback after determining whether or not they have an issue within the ethics jurisdiction.

Commissioner Suemori asked the EDLC if he took calls anytime, and the EDLC responded that he takes calls anytime during the week days and that messages are also taken and that the Integrity Hotline was also utilized, and that it is a city government, 24/7 open intake service.

Chair Marks inquired about the twenty (20) different types of cases and if the EDLC had the elements of each case or an outline, in case the investigator was asked to work on the case. The EDLC explained that not all of the cases had an outline, but if it were a gift case, the investigator would be informed orally about the elements of the case.

Commissioner Suemori asked if there were checklists for lobbyists or gift cases, and the EDLC responded that there were none. Chair Marks remarked that it was a good start and also requested a checklist in addition to the flow charts, with basically more details.

Commissioner Yuen informed the EDLC that he agreed, because it allows for flexibility, and if the Commission wanted to get into details, he was sure there were existing SOPs in each block depicted in the flow chart. Chair Marks remarked that she didn't know if it was written. Commissioner Yuen expressed that the Commission was strapped in resources, so it will take time to get the details on what they are requesting, so it could be on one of the things to do, but he would not suggest that it be done by next month. Commissioner Suemori responded that it would help the investigator. Commissioner Yuen further stated that the Commission should be mindful that they are not micro managing, and Commissioner Suemori agreed.

The EDLC asked the Commission where would be the best place to start on the chart to have the elements and any major legal issues that might fall within those elements stated on the drop down box. Commissioner Suemori expressed her concern about the investigator having to ask the EDLC for guidance on all of the twenty (20) issues, which she felt would take up a lot of the EDLC's time.

Commissioner Yuen stated that he would defer to the EDLC on how it should be presented or what should be included, since he is the EDLC and the person who is running the office, and that the EDLC could then present the details or elements at the next meeting and that

it should be the EDLC's call on what should be presented and what should be included, and the EDLC agreed.

12. Process to Transfer Complaint and Investigation Report to Department  
When the Complaint's Subject is a Civil Service Employee.

No Discussion.

C. For Discussion and Action: Modification of Personnel Evaluation Form for  
the Executive Director and Legal Counsel.

Chair Marks asked Vice Chair Lilly for his suggestion in the modification of the personnel evaluation form, and the Vice Chair asked that the matter be deferred until next month. He also informed the Commission that he received forms from other agencies and would be interested in the EDLC's thoughts on the idea of whether it was valuable or helpful. The EDLC responded that it would be more helpful to understand what it is the Commission wants to know about so they can evaluate the EDLC, and Vice Chair Lilly referred to the "blocks." Vice Chair Lilly responded that it was their call, and the EDLC asked if the Commission would look it over to see if anything was missing, a category or set of categories. Vice Chair Lilly asked that the Commission review the categories to make sure they are comfortable with the categories when rating the EDLC and if they are appropriate and if they needed to add, delete or emphasize. Chair Marks asked if the Vice Chair was willing to do a comparison or contrast for best practices, and the Vice Chair responded that an EDLC would be similar to the lead counsel at the ODC or Corporation Counsel, and also stated that the EDLC was a unique department. The EDLC stated that he asked for an evaluation form on the Cabinet level but didn't get a response, as well as asked how the section heads and division heads were evaluated and was told they used the same form that would be used for the ALC, with adjustments for supervisory responsibilities. Chair Marks responded that it could be combined with the Vice Chair's evaluation to have a numerical value. Vice Chair Lilly concluded that he would review the forms.

**Chair Marks asked for a motion to move out of open session to go into executive session. Commissioner Yuen so moved and Commissioner Amano seconded. All were in favor and the motion passed unanimously.**

**Chair Marks reported that Commissioner Suemori moved the Commission out of executive session and into open session. Commissioner Silva seconded and the motion was unanimously approved at about 3:10 p.m.**

#### IV. EXECUTIVE SESSION SUMMARY

A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the January 20, February 11, February 17, and March 16, 2016 Meetings.

Chair Marks reported that Commissioner Amano moved to approve the executive minutes of the January 20, February 11, February 17 and March 16, 2016 meetings. Commissioner Silva seconded and the motion was approved unanimously.

B. For Discussion and Action:

1. Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status Regarding the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest.

The Commission is complying with procurement code requirements and the Managing Director would be contacted.

2. Pursuant to HRS Secs. 92-5(a)(2) and (4), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee, and to Consult with the Commission's Attorney on Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities.

No action was taken.

3. Regarding the Formation of a Permitted Interaction Group Under Hawaii Revised Statutes § 92-2.5(b) to Review Proposals and Negotiate the Position of the Commission Regarding the Evaluation and/or Dismissal of an Officer or Employee of the Commission.

There was a motion made by Chair Marks and seconded by Commissioner Suemori to create a permitted interaction group (PIG), consisting of Vice Chair Lilly and Commissioner Amano. The action was unanimously carried.

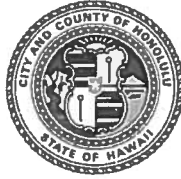
V. ADJOURNMENT

The meeting adjourned at approximately 3:15 p.m.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



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CHARLES WITTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

**AGENDA**  
Honolulu Ethics Commission  
**May 2, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

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- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

**I. CALL TO ORDER**



## II. NEW BUSINESS

### A. For Discussion and Action:

1. Hiring to Fill Staff Vacancies.

## III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

### A. For Discussion and Action:

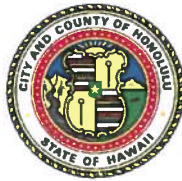
1. Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status Regarding the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest; and
2. Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorney on Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities Related to Charges Received by the Equal Employment Opportunity Commission on April 12, 2016 Against the Ethics Commission; and
3. Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorney Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities with Respect to the Ethics Commission's Position Regarding a Possible Civil Claim Against the Ethics Commission.

## IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: May 2, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Gina Mangieri, Reporter, KHON 2 TV News  
Justin Kanno – Cameraman, KHON 2 TV News  
Natalie Iwasa, Member of the Public

Absent: William Shanafelt, Investigator III  
Kristine Bigornia, Legal Clerk I

Stenographer: Lisa P. Parker, Legal Clerk III

**MINUTES OF THE MAY 2, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:36 a.m.

II. NEW BUSINESS

A. For Discussion and Action:

1. Hiring to Fill Staff Vacancies.

Chair Marks informed the Commission that considering the circumstances, asked if there were any volunteers to be on the hiring committee. Commissioner Suemori asked for what positions, and Vice Chair Marks responded that it was for the ALC and investigator positions, and if there was any discussion.

Commissioner Silva asked if it was the responsibility of the EDLC or the Commission. Commissioner Marks responded that under the circumstances the Commission might want to be involved.

Vice Chair Lilly requested a PIG (Permitted Interaction Group) and Commissioner Suemori asked that the matter be deferred, but she wouldn't mind being on the PIG. Vice Chair Lilly responded that the EDLC be on the PIG as well. Chair Marks stated that just one person could be delegated and also it wasn't necessary to have a PIG since the Commission could delegate authority. Commissioner Suemori asked to define authority or what she should be doing and thought it should be the EDLC's authority. Chair Marks responded that it's the Commission's responsibility and the authority in the past had been delegated to the EDLC, however the Commission could participate and work with the EDLC.

Commissioner Yuen asked the EDLC if he had any comments, and the EDLC had none. Commissioner Yuen stated that he would not oppose having to delegate to the EDLC. Chair Marks asked if anyone in the Commission had any concerns working with the EDLC, and Commissioner Silva responded that he would not have any concerns if they worked as a team.

**Chair Marks asked for a motion for Commissioner Suemori to work with the EDLC regarding hiring. Commissioner Silva so moved, Commissioner Yuen seconded, all were in favor and the motion was carried unanimously.**

Chair Marks asked if there was any public testimony.

Natalie Iwasa, a member of the public, stated that she was very concerned with what was happening with the Ethics Commission and that it was a major issue in the City. Ms. Iwasa continued that with the respect to the hiring matter, she asked that the Commission support the increase in salaries proposed to the Charter Commission and believes they moved that proposal on to the next stage in putting it into form for voting on the ballot, and if it did get selected as one of the questions, she hoped that the Commission would actively support it. Good people were needed to work with the staff.

**Chair Marks asked if there were any questions and if anyone else needed to testify on any matters in the executive session, and since there was none, asked for a motion to move into executive session. Commissioner Suemori so moved, Commissioner Silva seconded and all were in favor. Since there was no opposition, the motion passed unanimously.**

**Chair Marks reported that Commissioner Suemori moved to exit executive session and Commissioner Silva seconded.**

### III. EXECUTIVE SESSION SUMMARY

#### A. For Discussion and Action:

1. Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Provide the Status Regarding the Retention of an Independent Ethics Investigator Required Due to a Conflict of Interest.

Chair Marks reported that the Commission received information that the independent investigator required, due to a conflict of interest, should be retained soon and that since the procurement requirements had been complied with, only the paper work needed to be completed.

2. Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorney on Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities Related to Charges Received by the Equal Employment Opportunity Commission on April 12, 2016 Against the Ethics Commission.

Chair Marks reported that the Commission informed the EDLC that he and the Investigator should cooperate in every possible way with any members of Corporation Counsel or with the Equal Employment Officer regarding the EEOC Complaint received.

3. Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorney Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities with Respect to the Ethics Commission's Position Regarding a Possible Civil Claim Against the Ethics Commission.

The Commission's PIG is awaiting receipt of a response.

### IV. ADJOURNMENT

**Chair Marks asked for a motion to adjourn the meeting. Commissioner Yuen so moved, Commissioner Silva seconded, and since there was no opposition, all were in favor and the motion carried unanimously.**

The meeting adjourned at approximately 1:15 p.m.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

**AGENDA**

Honolulu Ethics Commission  
**May 18, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

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- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the April 20 and May 2, 2016 Meeting.
  - B. Executive Director and Legal Counsel's Administrative Report.
    - 1. Work Reports from Staff Members.
    - 2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice, Ethics Training, Website Hits).
    - 3. FY 2016 Budget Report.
    - 4. FY 2017 Budget Report.
    - 5. Move to Kapalama Hale.
    - 6. Charter Amendments Report re Ethics Laws.
    - 7. Considerations Regarding Hiring to Replace the Associate Legal Counsel and the Investigator.
  - C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.
- III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)
- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the April 20 and May 2, 2016 Meeting.
  - B. For Discussion and Action (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a) (2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved and/or; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.):

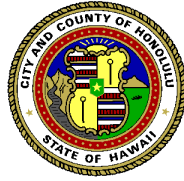
1. Pursuant to HRS Sec. 92-5(a)(2) and HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorney Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities Regarding the Procurement of an Independent Ethics Investigator to Conduct Investigations Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee Due to a Conflict of Interest; and
2. Pursuant to HRS Secs. 92-5(a)(4), Consultation with the Commission's Attorney Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities Related to Charges Received by the Equal Employment Opportunity Commission on April 12, 2016 against the Ethics Commission; and
3. Pursuant to HRS Sec. 92-5(a)(4) Consultation with the Commission's attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities with respect to the Ethics Commission's position regarding a possible civil claim against the Ethics Commission.

#### IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: May 18, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Nick Grube, Civil Beat  
Timothy J. Garry, Member of the Public  
Natalie Iwasa, Member of the Public

Absent: Hon. Victoria Marks (ret.), Chair  
William Shanafelt, Investigator III  
Lisa P. Parker, Legal Clerk III

Stenographer: Kristine Bigornia, Legal Clerk I

**MINUTES OF THE MAY 18, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

The Ethics Commission members received a copy of the May 16, 2016 Memorandum regarding the Agenda items for the May 18, 2016 meeting. Vice Chair Lilly called the meeting to order at 11:37 a.m.

II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the April 20 and May 2, 2016 Meetings.



**Vice Chair Lilly asked the Commission if there were any suggestions, amendments or discussion, and since there were none, asked for a motion to approve the minutes. Commissioner Yuen so moved, Commissioner Silva seconded, all were in favor and the motion passed unanimously.**

B. Executive Director and Legal Counsel's Administrative Report. (Written)

Vice Chair Lilly asked the EDLC if Investigator Shanafelt's last day of work was on Friday, May 20, 2016, and the EDLC confirmed.

1. Work Reports from Staff Members.

No Discussion.

2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice, Ethics Training, Website Hits).

No Discussion.

3. FY 2016 Budget Report.

No Discussion.

4. FY 2017 Budget Report.

No Discussion.

5. Move to Kapalama Hale.

Vice Chair Lilly asked the EDLC if there were any updates on the proposed move to Kapalama Hale. The EDLC informed the Commission that Chair Marks visited the site, but staff did not. The EDLC had inquired with the coordinator about a site visit for staff and the expected date for the move, but received no response. The EDLC informed the Commission about the lack of storage space for the filing cabinets, but after Chair Marks' informed the coordinator of the concern, her drawing of the most recent floor plan did include a separate storage room for the filing cabinets.

Before moving on to the next agenda item, Vice Chair Lilly asked that the guests present, introduce themselves and state their representation.

Mr. Timothy Garry and Ms. Natalie Iwasa introduced themselves and stated that they were representing themselves. Mr. Nick Grube introduced himself and stated that he was from Civil Beat.

Vice Chair Lilly asked if there were any testimonies that they wished to offer on any agenda items.

Timothy Garry testified that he was a member of the public and asked if any of the retired judges were allowed to hear cases for the Judiciary.

Mr. Garry clarified further and asked if the retired judges who are commissioners were able to handle matters outside of the Ethics Commission, and Vice Chair Lilly responded that his inquiry was not an issue before the Commission.

Mr. Garry further stated that the reason for his inquiry was because some of the commissioners had donated money to city politicians who they are charged with overseeing. Mr. Garry continued that he believed those commissioners who are retired judges are not allowed to make campaign donations to any politician.

Commissioner Silva responded that according to the rules members of the EC can make campaign donations, but they are not allowed to campaign.

Mr. Garry then stated that according to his attorney, if a judge was on a list to be called to hear cases for the Judiciary, they would not be allowed to make campaign contributions. Vice Chair Lilly responded that he did not know if it was true or not. Mr. Garry asked Vice Chair Lilly if he could look into his inquiry, and Vice Chair Lilly responded that he would not be able to look into his hypothetical inquiry.

Mr. Garry continued further that if certain commissioners donated to city politicians, sitting on cases involving those same politicians would lead to undue influence.

Vice Chair Lilly responded that if a member of the public believed that any City employee, which includes members of the Ethics Commission, or the staff, may have committed an ethics violation, then the Ethics Commission staff, who is in charge of receiving those complaints and evaluating and investigating those complaints, and that it is the procedure for investigating cases. Mr. Garry confirmed that he did file a complaint with the Ethics Commission, and also asked the Commission to expedite his complaint with the EDLC. Mr. Garry also informed the Commission that he also filed another complaint against the current Mayor.

Vice Chair Lilly explained to Mr. Garry that the staff and the Commission take complaints very seriously and that since the Commission is the decision-making body, it does not get involved with the investigation until presented by staff. Vice Chair Lilly added that the Commission relies on the staff to conduct the investigation and make recommendations to them on any ethics complaint, which is done on a regular basis, and Mr. Garry indicated he understood.

Mr. Garry further stated that pursuant to his research, the Ethics Commission is severely under-funded, and Vice Chair Lilly agreed. Mr. Garry continued that he filed a complaint a few weeks ago and had called the office several times and received no response, so he went to the office in person to file a complaint, and that he tried calling the office to follow-up several more times with no success. Therefore, he believes that because of under-funding and lack of staff, his complaint wouldn't be handled in a timely and just manner. Mr. Garry was concerned that there

would not be enough time to have the complaint investigation completed before the upcoming election.

Mr. Garry informed the Commission that he inquired at the Attorney General's ("AG") office, about overseeing the Ethics Commission, and the AG's informed him that the City Ethics Commission was not in their jurisdiction, and that it might be Corporation Counsel (COR). Mr. Garry believes that it would be an inherent conflict of interest, since the COR represented the Mayor and therefore unable to oversee the Ethics Commission and at same time be the counsel for the Mayor in a legal dispute.

Vice Chair Lilly responded that the EC is an independent Commission with no need for supervision and that they make their independent decisions and rely upon staff to vet the voluminous amount of complaints, and that the staff is overworked and that the Commission also agrees with his concerns. Mr. Garry informed the Commission that he had spoken with many City Council people, and they conveyed that they were experiencing the same difficulties.

Mr. Garry informed the Commission that he had communicated his concerns to the Hawaii congressional delegation and that someone from the outside on the Federal level should investigate the entire situation, since there is a potential conflict with the Mayor appointing the members of a Commission, and there being no transparency in light of Commissioners making donations to the Mayor, who appointed them.

Vice Chair Lilly asked if anyone had any questions or comments, and since there were none, asked if there were more testimony.

Natalie Iwasa, another member of the public, expressed her concerns about the recent events and believes that the Commission is one of the most important agencies within the City, but currently it was not functioning well.

Ms. Iwasa stated that the people in charge are not the ones to blame, but that a good portion of such blame is because of the lack of resources and funding. Ms. Iwasa continued that it was unbelievable when she learned that the City Council still did not include the \$6,000 in the budget for training City employees for next year, which is less than a dollar per employee. Ms. Iwasa continued further that if she understood Corporation Counsel, Donna Leong, properly, she said that she spoke to Chair Marks and that it would be pushed-off another year. Ms. Iwasa asked that the Commission be aggressive in asking for the \$6K for training.

With regard to the move to Kapalama Hale, which she assumed was a "done deal," Ms. Iwasa's concern was for the public not having easy access to the EC's office and meetings.

Ms. Iwasa was also concerned about the hiring of staff, because of the manner in which things were stated in the last EC meeting. She further stated that she did a search for "help wanted" for the EC and nothing had come up. She encouraged the Commission to expedite the hiring of the vacant positions, since the hiring process takes some time.

Ms. Iwasa further stated that in her opinion the EDLC is the one who has to work with the staff on a daily basis and so the EDLC needs to make sure that the staff person is a good fit. Vice Chair Lilly stated that the EDLC will be involved in the hiring process.

Ms. Iwasa also mentioned that she saw the March Minutes and commented that it was very important that the minutes be a little more detailed for the public's benefit.

Ms. Iwasa also expressed her concern that the Commission was micro-managing staff duties and that she understands there is a lot of political pressure. She further stated that it was very important for the Commission to operate as independently as possible from political pressures. She understands this is difficult to do because of the City Council and Administration funding and oversight, which is the reason for her proposal of the Charter amendment for an Inspector General.

Ms. Iwasa concluded her testimony with regard to an executive session matter, and stated that it was in her opinion unethical for the Police Chief to sue the Ethics Commission for doing its job, pursuant to the reports she had seen, and that the Police Chief and his wife are "grasping at straws" in their EEOC complaints. In her opinion, the EDLC has done a great job, considering the resources available, and asked that the Commission consider her testimony, and thanked the Commission.

Vice Chair Lilly asked if there were any more testimonies, and the EDLC informed him that there was a written testimony that was sent to the Commission by staff, filed by Ms. Lynne Matusow, a member of the public, and Vice Chair Lilly confirmed that the Commission received her written testimony.

Vice Chair Lilly informed the Commission about his philosophy of the Commission's job, which is not to micro-manage the office, but rather they are policy-makers at a higher level. The EC should not micro-manage its staff. Commissioner Suemori commented that she thinks that the Commissioners agree with him. Vice Chair Lilly responded that the goal is not to have to be involved in the day to day duties of staff, but on the other hand there have been a lot of issues regarding budget and the Charter Commission so they need to be involved in the different layers of the organization. Vice Chair Lilly asked if the EDLC needed to add anything more to his comments, and the EDLC had none.

#### 6. Charter Amendments Report re Ethics Laws.

Vice Chair Lilly asked the EDLC if he had any supplements, and the EDLC responded that he had some additions to the Charter Commission and the change to the gift law, which had been passed, and that out of the general commission it will go to the style committee, and would probably be one that would go on the ballot. The EDLC also reported that he testified before the Style Committee and that it will move Proposition 39 regarding the attorneys' salaries.

#### 7. Considerations Regarding Hiring to Replace the Associate Legal Counsel and the Investigator.

No Discussion

- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

Vice Chair Lilly informed the Commission that he handed-out a copy of a different evaluation form, rather than the one they had been using in the past. Vice Chair Lilly also offered copies to the guests in attendance.

Vice Chair Lilly explained that he took the evaluation forms from the Fire Chief, the Police Chief and one or two (2) other organizations, which were provided by staff. He further explained that after reviewing them, he tried to integrate things from those evaluation forms to fit with his prior form. The new form would be to annotate since it was in Excel and also asked that Legal Clerk Bigornia add those annotations to the draft Excel form from the EDLC. Vice Chair Lilly explained in detail about the form he was presenting, and also mentioned that the form was designed to tally the numbers provided and then the scores would be averaged.

Vice Chair Lilly further stated that at the June or July meetings if anyone had any comments on whether it should be changed or adopted, then it would be discussed or action could be taken, and asked that the staff circulate an Excel draft.

Commissioner Yuen asked how long it took to staff to prepare timesheets each day. The EDLC responded that he could only speak for his timesheet and that it wasn't a lot of time.

Commissioner Suemori commented that it was good time management. .

The EDLC stated his original concern that timesheets will not be helpful in increasing the EC's budget. The staff at Budget and Fiscal has always focused on the workload, not on whether staff is working efficiently.

The EDLC further stated that Budget and Fiscal has always been straight-forward in its agreement that the Ethics Commission needed more staff, but it would not be provided because the ethics program is not a high enough priority for the Administration. The EDLC also noted that Investigator Shanafelt received a response from his union representative explaining that the only time the city would implement timesheets is when it was "hanging someone out to dry," and that the unions do not allow it for their members.

The EDLC informed the Commission that he lists 6-10 items per day and explained in more detail. He further explained that staff was using their time as efficiently as possible before the advent of timesheets.

Commissioner Yuen asked about the staff, and the EDLC clarified that only the attorneys and investigator are required to do timesheets.

Commissioner Suemori commented that it wasn't a bad thing and that the Commission

was only trying to think about how they were going to justify having more investigators or more attorneys. The EDLC stated that staff has provided case statistics comparing other city and state agencies, and Budget and Fiscal will review the all the data. But the ethics program is not a high priority for additional funds. Timesheets will not affect the priority.

Commissioner Yuen asked that the Commission consider eliminating timesheets completely, and that in his opinion there is no value. Commissioner Silva commented that it is common knowledge that the EC is overloaded and short-staffed and that it would be difficult when hiring qualified people considering all of the extra work required and frankly would not be beneficial and therefore it should be eliminated. Vice Chair Lilly responded that the EDLC stated it didn't take too much time, and Commissioner Silva replied that it didn't matter how much time it took, it was all about trust, and the EDLC agreed. The EDLC stated that the public view is that the timesheets are inefficient and ineffective ways to deal with serious funding and resource problems at the Commission.

The EDLC also stated that he was directed to and did prepare workflow charts. He also provided information about how the attorneys and investigators determine proof of the elements of complaint cases. More recently, the Chair told him he that the EC wanted him to draft a procedural manual so that each staff member will know each step of their work duties.

The EDLC further stated that when the Commission sets priorities such as writing a procedural manual it should be done with the primary goal in mind: to keep up with the demand of requests for advice and complaints. He also expressed that the stress in the office comes from the excess workload, not the lack of a procedural manual. The EDLC asked that the Commission ask staff about the most stressful aspects of the work in the office. The EDLC understood the good intentions of the Commission, but felt that it had been misguided.

Commissioner Yuen commented that the Commission needed to be mindful that the office is a professional office, and not an assembly line, and that there were a lot of variables and uncertainties in conducting the work. The Commission would need to trust the staff and the director of the office.

Commissioner Silva stated that he also had a business and that his staff were cross-trained from one job to another. The EDLC agreed and responded that he had to make a decision on whether to hire an attorney or investigator, and decided that it would be beneficial to hire an attorney since an attorney could practice law as well as investigate. The EDLC further stated that in a small office, staff should have the right attitude, flexibility and the knowledge to be able to perform from one job to another. Commissioner Silva agreed and mentioned that since Legal Clerk Parker was on vacation, Legal Clerk Bigornia needed to fill-in and perform some of her duties, and the EDLC agreed and further stated that she was doing a good job.

Vice Chair Lilly commented about timekeeping -- since he's been in private practice for 35 years, and gets paid by the minute, and that more importantly it's about management and it being a management tool. Vice Chair Lilly further stated that he could see whether he was spending too much time on something, and receiving little in return. Commissioner Silva responded that the Ethics Commission is experiencing the same problem by spending too much

time on a few cases, while being backlogged on the many other cases.

**Vice Chair Lilly asked the Commission and the EDLC if they had further discussion or comments for the open session, and since there were none, asked for a motion to enter executive session. Commissioner Silva so moved, Commissioner Yuen seconded, all were in favor and the motion passed unanimously.**

**[Attorney Peter B. Carlisle entered at 1:30 p.m., the end of Open Session.]**

#### IV. EXECUTIVE SESSION SUMMARY

- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the April 20 and May 2, 2016 Meetings.

Vice Chair Lilly reported that the executive session minutes of the April 20 and May 2, 2016 meetings were approved unanimously.

- B. For Discussion and Action (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a) (2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved and/or; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.):

1. Pursuant to HRS Sec. 92-5(a)(2) and HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorney Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities Regarding the Procurement of an Independent Ethics Investigator to Conduct Investigations Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee Due to a Conflict of Interest; and

Vice Chair Lilly reported that the Commission had hired Barbara Petrus to conduct the investigation, and would be meeting with COR.

2. Pursuant to HRS Secs. 92-5(a)(4), Consultation with the Commission's Attorney Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities Related to Charges Received by the Equal Employment Opportunity Commission on April 12, 2016 against the Ethics Commission; and

Vice Chair Lilly reported that counsel reported on the status of the EEOC complaint status, and that the Commission established a PIG with Commissioner Amano and Vice Chair Lilly to review and approve, as appropriate, any draft response by COR to the EEOC.

3. Pursuant to HRS Sec. 92-5(a)(4) Consultation with the Commission's attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities with respect to the Ethics Commission's position regarding a possible civil claim against the Ethics Commission.

The Commission would be sending out a public notice meeting, to be held on Friday, May 27, 2016 at 11:30 a.m.

The EDLC asked why the item could not be heard as scheduled, and Vice Chair Lilly responded that it would be heard on Friday, May 27. Commissioner Suemori responded that they needed to vacate the conference room and that there was no quorum.

#### V. ADJOURNMENT

The meeting adjourned at approximately 1:35 p.m.



ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov)  
Internet: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

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KIRK CALDWELL  
MAYOR



2016 MAY 20 PM 4:12  
CHARLES W. TOTTE  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

**AGENDA**

Honolulu Ethics Commission  
**May 27, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

**I. CALL TO ORDER**

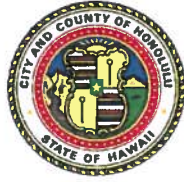
- II. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a) (2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)
- A. For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4) Consultation with the Commission's attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities with respect to resolution of Executive Director and Legal Counsel's possible civil claim against the Ethics Commission.

III. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

**NOTICE OF CANCELLATION**

The Honolulu Ethics Commission meeting previously scheduled for the following time and location has been cancelled.

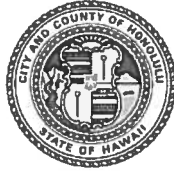
**Friday, May 27, 2016 - 11:30 a.m.**

Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA  
Honolulu Ethics Commission  
**June 15, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

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**WRITTEN TESTIMONY**

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- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the May 18, 2016 Meeting.
- B. Executive Director and Legal Counsel's Administrative Report.
  - 1. Work Reports from Staff Members.
  - 2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice, Ethics Training, Website Hits).
  - 3. FY 2016 Budget Report.
  - 4. FY 2017 Budget Report.
  - 5. Move to Kapalama Hale.
  - 6. Charter Amendments Report Regarding Ethics Laws.
- C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

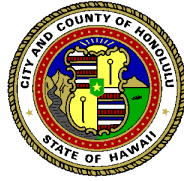
- A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the May 18, 2016 Meeting.
- B. For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4) Consultation with the Commission's attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities with respect to resolution of Executive Director and Legal Counsel's possible civil claim against the Ethics Commission.

IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: June 15, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Andrew Perreira, Information Officer, Mayor's Office  
Chad Blair, Reporter, Civil Beat  
Marcel Honore, Reporter, Star Advertiser  
Marc Delorme, Independent Media Productions LLC  
Pamela Young, Reporter, KHON 2 TV News  
Terry Sagawa – Cameraman, KHON 2 TV News  
Natalie Iwasa, Member of the Public  
Timothy J. Garry, Member of the Public and Candidate for  
Mayor, City and County of Honolulu

Absent: Stanford Yuen, P.E., Commissioner

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE JUNE 15, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:34 a.m. and took a roll call vote of all Commissioners in attendance, as well as stated that Commissioner Yuen was unable to attend and Commissioner Suemori would be arriving late, but that they still had quorum.

## II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the May 18, 2016 Meeting.

**Chair Marks asked for a motion to approve the minutes. After Commissioner Amano so moved and Commissioner Silva seconded, she then asked if there was any discussion, and since there were none, all were in favor and the motion carried unanimously.**

Chair Marks asked the testifiers and other guests to introduce themselves: Marc Delorme from Independent Media, Marcel Honore from the Star Advertiser, Chad Blair of Civil Beat, Tim Garry and Natalie Iwasa, both members of the public, and Andrew Perreira of Communications, from the Mayor's Office.

Chair Marks asked Mr. Garry to testify. Mr. Garry stated that he was a candidate for Mayor for the City and County of Honolulu, in the upcoming election. Mr. Garry requested that the Commission expedite the investigation and set for hearing his complaint, as well as the complaint by another person, against Mayor Kirk Caldwell. Mr. Garry further informed the Commission that the appointments made by the Mayor, also involved personal relationships with his appointees, especially with the monetary contributions made to him for his political campaign.

Mr. Garry further stated that all members of the Honolulu Board of Ethics be compelled to disclose any monetary contributions to the Mayor's campaign and that they should be recused from the hearing. Mr. Garry filed his Complaint two (2) months ago and learned that the probability of it being investigated and brought before the Commission would not happen before the election on August 13, and therefore requested that the Commission expedite the investigation and that the matter be heard prior to the election.

Mr. Garry also stated that after he read the article on Civil Beat, he was concerned about the resources that were being provided to hear complaints in a timely manner, and that since there were no Ethics Staff to investigate and to bring the matters before the Commission, it would be a disservice to the citizens of the City and County of Honolulu.

Chair Marks responded by correcting the appointments of the Commission and that three (3) members were appointed by the Mayor, two (2) Commissioners were appointed by former Mayor, Peter Carlisle, and one (1) Commissioner member, Steve Silva, was originally appointed by former Mayor Mufi Hannemann and later reappointed by former Mayor, Peter Carlisle.

Mr. Garry responded by reconfirming that there were six (6) Commissioners and also asked about the status of confirmation of the newly appointed Commissioner, and Chair Marks responded that she could not confirm. Mr. Garry continued further and stated that if his complaint was brought before them, with six (6) Commissioners serving, and that if three (3) of the Commissioners recused themselves of past donations to Mayor Caldwell, they would not

have a quorum to even hear the complaint. Commissioner Silva informed Mr. Garry that a Commissioner could make contributions to a politician but could not campaign for them. Mr. Garry responded that a conflict would be present, and that it should be brought before the Charter Commission or City Council.

Commissioner Amano responded that normally complaints get filed in the office and the Commission is never informed and also asked if it was appropriate to ask about the status of Mr. Garry's complaint. Chair Marks responded that nothing had been brought before the Commission regarding his complaint. Mr. Garry reiterated again about his complaint not being heard until after the election, as well as the lack of resources of the Ethics Commission to investigate.

Commissioner Amano asked Mr. Garry when he submitted his complaint and to confirm the day, and he responded that it was filed, in-person, the day after Mayor Caldwell made his announcement that he was running for re-election, about two (2) months ago, and that another person filed a complaint, as well, ten (10) minutes after the Mayor made his announcement. Mr. Garry could not confirm the exact date of the Mayor's re-election announcement, but did ask Andrew Perreira of the Mayor's office, who responded that he would look it up. Mr. Garry stated that after Mayor Caldwell made his re-election announcement on the grounds of Honolulu Hale, with City and County employees present, he decided to file a complaint.

Mr. Garry informed the Commission that his complaint had not been investigated and that it would not be investigated until after the primary election. Commissioner Amano asked Mr. Garry who informed him, and the EDLC responded that he had informed Mr. Garry.

Mr. Garry further informed the Commission that he had a personal stake regarding his complaint, since he is a mayoral candidate, and reiterated again about the lack of resources and lack of staff of the Ethics Commission, and that it would be a disservice for him and the community.

Chair Marks asked Ms. Natalie Iwasa to testify, and Ms. Iwasa responded that she would give her testimony after there was discussion on several upcoming items, and Chair Marks agreed.

#### B. Executive Director and Legal Counsel's Administrative Report.

Chair Marks asked the EDLC to report, and the EDLC responded that he did not have anything to add.

Chair Marks asked if there were any other questions about the EDLC's report and asked if Ms. Iwasa wanted to testify.

##### 1. Work Reports from Staff Members.

No discussion.



## 2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice, Ethics Training, Website Hits).

Chair Marks asked the EDLC to clarify his report on closing twelve (12) cases and the number of cases that were still open for review and closing, as well as to confirm that he was not able to review and close those cases, and the EDLC confirmed. Chair Marks asked the EDLC to further comment, and the EDLC responded that he hadn't had a chance to review and close those cases and that frankly he was concerned about the recommendations to close, generally from one of the past staff members, and believed that it would be more prudent to have someone sit down and take a very thorough look at those cases being recommended for closure and that he could not inform the Commission further in open session. Chair Marks understood and agreed. Chair Marks also asked the EDLC if the 37 cases awaiting review and closure included the cases assigned to the EDLC, and the EDLC confirmed. Chair Marks asked if there were any questions for the EDLC, and Commissioner Amano informed the Commission that since the EDLC's report included the status of the move to Kapalama Hale, asked for an update.

## 3. FY 2016 Budget Report.

Ms. Iwasa testified about the \$18,000 for the current year and that she would like to see the Ethics Commission become more independent and would also keep it in mind for next year's budget.

## 4. FY 2017 Budget Report.

Chair Marks reported that the City Council added \$6,000 to the budget, which would be for the Mindflash ethics training program and survey monkey software. The EDLC responded that the \$6,000 may or not cover the survey monkey, but it was relatively inexpensive. Chair Marks responded that she thought it was all inclusive, and the EDLC informed her that the difficulty was that the Mindflash might increase in price.

## 5. Move to Kapalama Hale.

The EDLC informed the Commission that the target date for the EC to move would be in August and that issues were raised, as well as directed the Commission to view the three (3) floor plan diagrams, which showed that there would be less square footage. The EDLC further stated that the Legal Clerk III had some concerns about fitting-in all of the office equipment and that the concerns were given to Mr. Dennis Kodama of DDC (Department of Design and Construction) and that no response was received to date. The EDLC also informed the Commission that there was no site visit by staff, since the partitions had not been constructed. Commissioner Amano asked about the wall construction, and the EDLC responded that there were no walls since his last communication with Mr. Kodama. Chair Marks added that there are to be two (2) walls to block-off the hallway and that the three (3) offices that were depicted, including the storage room, were existing spaces.

Commissioner Silva asked if the existing parking problem was still unresolved, and the EDLC confirmed.

Vice Chair Lilly asked the EDLC if the size of the office space was still the same from last month and if it was restrictive of space, and the EDLC confirmed. The EDLC further stated that the departments that are moving were told not to bring office furniture, only filing cabinets and electronic equipment and that there were a lot of unresolved questions, but he hoped to get someone from DDC to help resolve questions and issues.

Commissioner Silva asked if the date for the move would be pushed back, and the EDLC could not confirm. Chair Marks asked if the DMV (Department of Motor Vehicles), the main tenant, would be moving in June, and the EDLC responded that it was the targeted date.

Ms. Iwasa testified that she was really concerned about the EC's move to Kapalama Hale, because the layout looked like the lunch room was going to be accessible, via the conference room or from outside and that confidentiality would be compromised since the Commission meetings are held during the lunch hour, and that it would also be difficult for an investigator to conduct his interviews.

Ms. Iwasa further stated that during the morning City Council meeting, Bill 38 regarding the parking area was discussed, and that DMV would be utilizing a large area of public parking, with no other parking available in the area for the public. Ms. Iwasa informed the Commission that not all staff would be provided parking, and that it would be essential when hiring the new legal staff, and that parking should be provided for them, as well as the existing staff. Ms. Iwasa's other concern was limited parking for the public and the additional travel time and the distance for the public to attend the EC meetings and that public participation in the meetings were very important. Ms. Iwasa asked that the Commission do everything they could to request that the move by the EC be cancelled, since there would be no room for growth and that it would be crucial and important to hire another investigator, considering the number of complaint cases and requests for advice.

**Chair Marks requested that the record reflect Commissioner Suemori's attendance at 11:53 a.m.**

Chair Marks asked if there were any questions for Ms. Iwasa, and the EDLC commented that he sent an email to former Managing Director, Ember Shinn, regarding the reasons for staying essentially close to City Hall, as well as other supportive reasons. The EDLC's reasons included interviewing 500 people per year and that it was necessary to be close to the police department, Board of Water Supply, Honolulu Hale, and the Fasi Building, etc. The EDLC continued that being in the same vicinity of those departments would make it a lot easier for the EC to conduct its teaching, and also to be able to testify on bills at City Council and to be able to offer them quick advice. The EDLC informed the Commission that he could forward the email he sent to Ms. Shinn, if requested.

Commissioner Silva asked if the Neighborhood Board Commission (NCO) was moving to Kapalama Hale and whether their office space was available at City Hall, and the EDLC responded that it was his understanding that Budget and Fiscal Services, Internal Control, would be taking over their office space. The EDLC further informed the Commission that the EEO (Employees Equal Opportunity) office, as well as an undercover group from HPD and

DMV would be sharing the same first floor of Kapalama Hale. The EDLC continued that there were no other office spaces available, and that he had also inquired with HART, since they had more office space than needed. The EDLC also stated that the HART budget had been recently cut so their office space would not be available as well. The EDLC also informed the Commission that the Oahu Workforce Investment Board (OWIB) would be moving into the EC's present office space.

Chair Marks asked if there were any other questions or comments, and since there were none, moved the discussion to the Charter Commission.

#### 6. Charter Amendments Report Regarding Ethics Laws.

The EDLC responded that there was nothing to add except that he submitted the agency response to the Charter Proposal to amend the gift law in the Charter and that as far as he knew, it was moving along. The EDLC also believed that the staff salary issues were also moving along.

#### C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

Vice Chair Lilly informed the Commission that they had a final draft and that the Commission should look it over and to inform him of any edits or revisions, as well as whether they were agreeable. Chair Marks asked the Vice Chair whether it was an Excel document, and he confirmed and that it could also calculate.

Chair Marks asked if there were any other questions for the Vice Chair.

Vice Chair Lilly commented about a recent article by Civil Beat which insinuated that three (3) of the members of the Commission, the three (3) judges, might have been put on the Commission for an ulterior motive and that categorically it was false. Vice Chair Lilly continued that he had known the three (3) judges for more than 30 years and worked with Judge Amano, 40 years ago, and that they had the highest reputation for integrity and morals of anyone he's known and that they would not be a party to anything other than to do the right thing. Vice Chair Lilly continued and stated that whatever decisions they made were based on their own personal judgment and not because of any other reason. Chair Marks thanked the Vice Chair.

Chair Marks asked if there would be any testimony on any of the executive session items.

Ms. Iwasa was not clear on the executive session items, however she commented about the investigation that was conducted late last year, by an independent person, and further stated that when dealing with ethics, a lot has to do with perception and that when you have an investigator who contributed to the Mayor, the perception is that the person is not independent. Ms. Iwasa further stated that after reading through the report, it was emphasized that it was a human resources issue, however when it was brought to the press, she felt that the manner in which it was done was unfair, especially since other people being investigated are usually put on paid leave.

Ms. Iwasa continued that when someone is being investigated, it is unknown who it is, so she felt that the way that the EDLC's issue had been handled had not been fair. Ms. Iwasa continued that the stress within the office was understandable considering the level of work, the investigations, the complaints and requests for advice, and that the statistics month after month show that they are not being addressed. Ms. Iwasa informed the Commission that she personally felt that the rail issue should be investigated very aggressively, until it is known that there is no further options as far as trying to hold people accountable, considering it being an 8 billion dollar project. Ms. Iwasa informed the Commission that she appreciated the EDLC and to please consider her testimony during their executive session.

Former Mayor Peter Carlisle, on behalf of the EDLC, thanked Ms. Iwasa for her comments.

**Chair Marks asked for a motion to move out of open session and to move into executive session. Commissioner Silva so moved, Commissioner Suemori seconded, all were in favor and the motion passed unanimously.**

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

A. For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the May 18, 2016 Meeting.

**Chair Marks asked for a motion to approve the Minutes of the Executive Session of the May 18, 2016 meeting. Vice Chair Lilly so moved, Commissioner Suemori seconded, and the motion was carried unanimously.**

B. For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4) Consultation with the Commission's attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities with respect to resolution of Executive Director and Legal Counsel's possible civil claim against the Ethics Commission.

Chair Marks informed the Commission that a report by the PIG, consisting of Vice Chair Lilly and Commissioner Amano, regarding a matter that pertained to the Commission's powers, duties, privileges, immunities, and liabilities with respect to resolution of Executive Director and Legal Counsel's possible civil claim against the Ethics Commission, and that after the report was made to the Commissioners, a motion was made to approve a separation from an employment

agreement. Chair Marks further stated that the motion was made by Vice Chair Lilly, seconded by Commissioner Amano and approved unanimously. Chair Marks continued further that based on the approval, the Commission would be distributing a press release.

Chair Marks informed the Commission that there would be a special executive session meeting on June 23, 2016 at 11:00 a.m., in order to discuss the next steps with regard to filling vacant positions. Chair Marks reminded the Commission that the next regularly scheduled meeting was on July 20, 2016 at 11:30 a.m.

Chair Marks asked if there were any other comments. Commissioner Amano thanked Vice Chair Lilly, Peter Carlisle and Chuck for effectuating the agreement and that on her own behalf, wished the EDLC and his family well. She thanked the EDLC for everything that he had done for the City and expressed her sincere best wishes.

Vice Chair Lilly thanked Commissioner Amano for her hard work and for Peter Carlisle's hard work as well. Vice Chair Lilly informed the EDLC that he was sorry to see him go, and that he had learned a lot from him for over four years and that the EDLC had taught him a lot about ethics rules and enforcement, especially about education for the City employees, as well as for the community and that he had done a great job and congratulated him on all of his achievements and that he personally appreciated the hard work that he had done on behalf of the City and County of Honolulu. Vice Chair Lilly wished the EDLC all the best. The EDLC thanked Vice Chair Lilly.

Peter Carlisle informed the Commission that it was an unfortunate end to a career devoted to demanding ethics in City government. Mr. Carlisle further stated that in his opinion, as a friend, it was undeserving and shabby treatment for a devoted employee of the City.

#### IV. ADJOURNMENT

**Commissioner Amano moved to adjourn the meeting. Vice Chair Lilly seconded, all were in favor and the motion carried unanimously.**

The meeting adjourned at approximately 1:22 p.m.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
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KIRK CALDWELL  
MAYOR



AGENDA  
Honolulu Ethics Commission  
**June 23, 2016 – 11:00 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

I. CALL TO ORDER

## II. OPEN SESSION

### A. **Hiring for the Full Time Positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator, Including Formation of a Permitted Interaction Group to Investigate Such Hiring.**

The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to hiring for the full time positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator and for the formation of a permitted interaction group to investigate hiring for the positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

### B. **Hiring for the Temporary Filling of the Positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator, Including Formation of a Permitted Interaction Group to Investigate Such Hiring.**

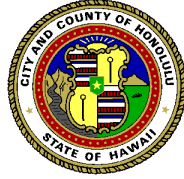
The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to temporarily filling the positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator and for the formation of a permitted interaction group to investigate hiring for the positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

## III. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
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KIRK CALDWELL  
MAYOR



ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: June 23, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Duane W. H. Pang, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Catherine Maki, Administrative Services Officer,  
Department of the Corporation Counsel  
Noel Ono, Assistant Director of Human Resources,  
Department of Human Resources  
Lila T. Tom, Human Resources Administrator,  
Department of Human Resources-Classification and Pay Division  
Jenny K. Tobin, Human Resources Manager III, Department of  
Human Resources, Employment and Personnel Services, etc.  
Gwynne W. Inamasu, Human Resources Manager II, Department  
of Human Resources, Employment and Personnel Services  
Gordon Y. K. Pang, Reporter, Star Advertiser  
Timothy J. Garry, Member of the Public and Candidate for  
Mayor, City and County of Honolulu

Absent: Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE JUNE 23, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER



Chair Marks called the meeting to order at 11:05 a.m. and acknowledged all the Commissioners in attendance, as well as stated that Commissioners Riki Amano and Stanford Yuen were traveling, but that they still had quorum.

Chair Marks introduced Duane Pang of the Corporation Counsel, Lisa Parker and Krissy Bigornia of the Ethics Commission, Cathy Maki, Administrative Services Officer of Corporation Counsel, Noel Ono, Assistant Director of Human Resources, Lila Tom, Human Resources Administrator, Jenny Tobin, Human Resources Manager III, Gwynne Inamasu, Human Resources Manager II, and Gordon Pang of the Star Advertiser.

Chair Marks informed the Commission that all of the Human Resources personnel were in attendance to answer any questions.

Chair Marks also informed the Commission that written testimony from Ms. Lynne Matusow was submitted and accepted.

Chair Marks informed the Commission that Open Sessions A and B, pertaining to the hiring of full-time positions and the possibility of temporary hire positions, would be discussed in executive session.

## II. OPEN SESSION

### A. **Hiring for the Full Time Positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator, Including Formation of a Permitted Interaction Group to Investigate Such Hiring.**

The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to hiring for the full time positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator and for the formation of a permitted interaction group to investigate hiring for the positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

### B. **Hiring for the Temporary Filling of the Positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator, Including Formation of a Permitted Interaction Group to Investigate Such Hiring.**

The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to temporarily filling the positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator and for the formation of a permitted interaction group to investigate hiring for the

positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

Chair Marks asked if there were any questions, and since there were none, asked the human resources personnel for position descriptions for the Executive Director, Associate Legal Counsel and the Investigator, as well as their SR levels, and that they were all exempt positions, and therefore not subject to civil service, and that the Commission could hire whoever they wanted.

Noel Ono informed the Chair that they had position descriptions for the Assistant Legal Counsel and Investigator, however they had none on file for the Executive Director, except for a draft. Ms. Lila Tom responded that there was a sample given at a meeting, and Deputy Duane Pang also mentioned that the Ethics Commission dictated his duties and responsibilities, and that it could change upon the new hiring, and Chair Marks acknowledged. Deputy Pang further explained that the other two (2) positions had position descriptions, since their positions required that they be in the classification system.

Vice Chair Lilly asked to see the draft, and the Chair agreed to his request. Chair Marks then stated that she needed information on the SR ratings and that she had information on current and projected salaries for the Executive Director and the Associate Legal Counsel, and also asked for those projections for the Investigator, as well as a list of benefits. Deputy Pang responded that the benefits were listed on their website, and Noel Ono informed the Commission that Jenny Tobin would provide such information to Cathy Maki. Chair Marks requested that the information be sent directly to her.

Commissioner Suemori commented that the new hires would need to know the current retirement benefits, as well, and also inquired about the parking availability. Chair Marks responded that as soon as the EC relocates, parking would be influx and that the Executive Director should get parking, but was not sure. Commissioner Suemori thought that the position would get parking and would also have to pay for the parking. Legal Clerk Parker informed the Commission that she received confirmation that she secured a parking stall and had also tried to secure parking for the three (3) positions at Kapalama Hale, but was informed that the new hires would need to apply for the parking. Commissioner Suemori assumed that parking spaces would be secured for those positions, and Legal Clerk Parker agreed and that there is usually blocked parking spaces, but that she needed to confirm with the Department of Facility Maintenance Division (DFM) Chief. Noel Ono also confirmed about the limited parking and that it should be deferred to DFM, the division that controls, sets the rules and also makes the determinations. Chair Marks asked for the name of the person at DFM and Legal Clerk Parker informed her that it was Clarice Kam. Mr. Ono also confirmed that Clarice Kam was the contact person. Commissioner Silva asked about parking for the Commissioners and the testifiers, and Noel Ono again stated that they would need to be discussed with Clarice Kam at DFM.

Chair Marks informed the Commission that it would be a good idea to form a PIG (Permitted Interaction Group), to hire for the full-time position, and if necessary, to hire on a temporary, so that the Commission, as a whole, would not need to be involved. Vice Chair Lilly responded that there was already a PIG for the Assistant Legal Counsel (ALC).

Commissioner Silva disagreed since his latest understanding was that the Executive Director (EDLC) would be hired first and that he would hire the ALC and Investigator. Vice Chair Lilly disagreed.

**Chair Marks called for a motion for the creation of a PIG to investigate the hiring of full-time positions for an EDLC, ALC and an Investigator. Vice Chair Lilly so moved and Commissioner Suemori seconded, but also called for the question.**

Chair Marks asked for any discussion and Commissioner Suemori explained that they had a discussion to hire on a temporary basis. Chair Marks responded that a PIG would need to be created, and Commissioner Suemori agreed.

**Chair Marks asked if there were any other discussions and since they were none, reiterated that it already moved and seconded to create a PIG, all were in favor, and the motion passed unanimously.**

**Chair Marks asked for a motion to have Commissioners Steve Silva and Allene Suemori be the PIG for the full-time hiring. Vice Chair Lilly so moved, Commissioner Silva seconded. Commissioner Suemori asked for clarification that it would be for the full-time EDLC only, and Commissioner Silva confirmed.**

Chair Marks stated that it wasn't her motion and Vice Chair Lilly understood. Chair Marks further stated that her thoughts were at some point to give the EDLC the opportunity to hire their own staff, but the Commission may want to be involved or do it on their own, so there's a need to be flexible and to not limit themselves.

Vice Chair Lilly explained that his motion was to appoint a PIG to do a search for just a full-time EDLC, and Chair Marks asked if he really wanted to limit the search, since she wanted to leave it open. Commissioner Suemori commented that it should not be for the ALC and the Investigator, and further stated that the PIG would be herself and Commissioner Silva, who would be doing the EDLC, ALC and the Investigator, but had questions on how it would relate to the temporary filling, which was the reason for her wanting to discuss the temporary filling first.

Chair Marks asked Commissioner Suemori what she wanted to say about the temporary hiring and that they all had different ideas on how the process should occur. Commissioner Suemori's understanding was that they would try and get someone who is retired, who could do the work fast and who knew what he was doing to respond to the questions or requests for advice. Vice Chair Lilly commented that they should be doing both in tandem and Commissioner Suemori wanted clarification.

Chair Marks informed the Commission that her thoughts were to get someone in as quickly as possible on a temporary basis and that they could hire on an 89-day contract or on an independent consultant basis, but asked for confirmation. Noel Ono responded that it depended on the situation and explained that they had been informed that the Commission was

looking to immediately hire someone on a temporary basis to help with the administrative matters of the Commission, until such time the Commission was ready to look for an EDLC, and thereafter the EDLC would then hire an assistant, as well as an Investigator. Mr. Ono further stated that in order to hire immediately, it would be on a personal services contract, since the process would be generated and expedited by Cathy Maki, to have someone start in a matter of days, and that the salary would be decided in further discussions.

Mr. Ono informed the Commission that an 89-day hire was more for a retiree from the City or State government, since it would not jeopardize their retirement benefits, and that hiring someone from the private sector would be done through the normal process.

Mr. Ono also explained to the Commission that since it's the end of the fiscal year, they could only hire the temporary hire until June 30 and thereafter a second contract would have to be processed in order to encumber the hire from July 1, or for the next 3 to 6 months. Mr. Ono also informed the Commission that DHR could assist them with the process and that the temporary hire from the City or State governments have a 6-month waiting period, to not jeopardize their retirement benefits, and also mentioned that the former Investigator was hired on an 89-day and independent services contracts. Mr. Ono emphasized that the hire would still need to meet with the criteria and standards by law, and that Deputy Pang could assist them.

Noel Ono informed the Commission that DHR could provide them with a list of investigators to review and also assist and advise the Commission on the recruitment process. Chair Marks responded that she needed position descriptions to create and advertise for the positions. Chair Marks also advised Commissioner Suemori that while reviewing the resumes, she could also choose someone who applied for the EDLC, which could also be a potential hire for the ALC position.

Chair Marks asked Noel Ono for the list of resumes for the Investigator, and Mr. Ono responded that they had a list that was given to the previous EDLC in 2015. Chair Marks also asked about advertising in the Bar Journal, and Cathy Maki responded that it depended on the size of the ad. Vice Chair Lilly also stated that an ad could be posted on Craigslist. Legal Clerk Parker commented that she did research on posting an ad in the Bar Journal and would provide copies of the Media Kit to the Commissioners.

Chair Marks acknowledged the presence of Mr. Garry and asked if he wanted to give testimony.

Mr. Garry testified that he wanted to express his concerns about his and another gentlemen's complaint against Mayor Caldwell and the lack of investigation and/or hearing in a timely manner, considering the upcoming election. Mr. Garry further stated and requested that the Board appoint a special investigator to look into the matters. Mr. Garry also stated his displeasure with the Board and an inept Commission with no investigator or EDLC, and if possible for the future to have a deputy executive commission to carry on if the EDLC should resign and/or for lack of staff. Mr. Garry commented on the Commission setting up a committee to hire, but didn't perceive that anyone could investigate and bring his matter to hearing before

the election and that he felt like his civil rights had been violated by the lack of an effective Commission.

Commissioner Silva responded that it wasn't easy finding replacements for the EDLC and other staff positions, and informed Mr. Garry that he should discuss his issues with Deputy Duane Pang. Mr. Garry responded that he did bring his concerns to the Attorney General's (AG's) office and received a response letter informing him that it was the responsibility of the Board to fulfill their responsibilities. Chair Marks informed Mr. Garry that the AG was a State agency and unrelated to the City. Mr. Garry responded that he thought that the State could intercede, since the City was in violation of the Charter, because they weren't doing their job, and that the Corporation Counsel would be in conflict since they represented the Mayor. Chair Marks responded that Corporation Counsel does not oversee the Commission, since they are administratively attached and that they only provide legal advice.

Vice Chair Lilly informed Mr. Garry that the Commission only meets on a duly noticed date and time, with efficient advance notice and that they convened the meeting early because of what happened at the meeting one week ago. Vice Chair Lilly assured Mr. Garry that the Commission was moving expeditiously as possible, under the circumstances, and that they were establishing a committee to look at hiring on a temporary basis, which would thereafter enable them to re-staff the EC as quickly as possible. Vice Chair Lilly continued further that they wanted to also be sure that whoever they chose would be qualified and competent, as well as someone that the Commission would feel confident to work with.

Mr. Garry asked if there was a timetable, and Chair Marks responded that it would be as soon as possible. Commissioner Suemori also informed Mr. Garry if he realized that the meeting had to be scheduled for June 23 because of the Sunshine Law and that the Commission was working expeditiously, and Mr. Garry understood.

Mr. Garry then restated his concerns by informing the Commission that the issues of the EC should not have gone as far as it did and that if the EDLC resigned for whatever reason, someone should have already been there to take over, like the managing director for the Mayor. Commissioner Suemori informed Mr. Garry that the ALC had been sitting-in for the EDLC, but she left before he did and that the EDLC did not fill the ALC position, and Mr. Garry seemed to understand. Vice Chair Lilly informed Mr. Garry that the ALC and Investigator positions would also be the back-up positions for the EDLC, and Mr. Garry was satisfied and thanked the Commission for their time.

Chair Marks directed the Commission back to the hiring process, and Noel Ono reiterated again the criteria and standards of the different hiring contracts. Mr. Ono also informed the Commission that Cathy Maki would need to research the adequate and available funding for the positions. Commissioner Silva asked if an 89-day contract could be extended, and Mr. Ono responded that it would be an 89-day work schedule with a 1-day break.

Chair Marks asked that Vice Chair Lilly restate his motion. Vice Chair Lilly stated that his motion was to create a PIG to search for an interim and a permanent, and Chair

Marks stated that the PIG would be Commissioners Suemori and Silva for the permanent fill, but that their responsibilities need to be defined.

**Chair Marks moved for a motion to have the PIG, consisting of Commissioners Silva and Suemori, to have the authority to look at all vacant positions. Vice Chair Lilly seconded, and since there was no discussion, all were in favor and the motion passed unanimously.**

**Chair Marks moved for a motion to have her and Commissioner Amano be the PIG to look at filling any vacant positions on a temporary basis. Commissioner Suemori seconded, and since there was no discussion, all were in favor and the motion passed unanimously.**

Chair Marks asked if there were any other questions, and Deputy Duane Pang asked to suggest to the Commission, with respect to time, if they would consider giving the last PIG the authority to make an offer to that person, in order to get that person on board as soon as possible, rather than requiring the PIG to come back to full commission for approval.

**Commissioner Suemori moved that the temporary PIG be given the authority to extend an offer to a perspective candidate to fill that position, without coming back to the full commission for approval. Commissioner Silva seconded, and since there was no discussion, all were in favor and the motion passed unanimously.**

**Commissioner Marks asked for a motion to end the open session and to go into executive session. Vice Chair Lilly so moved, Commissioner Silva seconded, all were in favor and the motion passed unanimously.**

**At 12:00 p.m., Commissioner Marks informed everyone that Vice Chair Lilly made a motion to end the executive session and to move into open session. Commissioner Suemori seconded the motion, and it was passed unanimously.**

Chair Marks informed everyone that during the executive session the board unanimously gave her, the Chair, authority to extend an offer to an individual who would not be named, and that she would be making the offer very soon. She also stated that she would not say for what position.

Chair Marks asked if there was any other business before the Commission.

Noel Ono asked that for processing the position, if the person would be hired temporarily, and if they would also be starting in the month of June, or July 1, since Cathy Maki would be drawing up the contract. Chair Marks responded that they did not know when the person would be starting and that she would be in touch with Mr. Ono. Mr. Ono understood and also suggested that they could also inform Ms. Maki.

Vice Chair Lilly asked if he could be provided with a list of investigators.

### III. ADJOURNMENT

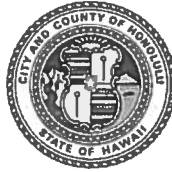
**Chair Marks asked for a motion to adjourn. Commissioner Suemori so moved, Vice Chair Lilly seconded, all were in favor and the motion passed unanimously.**

The meeting adjourned at approximately 12:02 p.m.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov)  
Internet: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

KIRK CALDWELL  
MAYOR



AGENDA  
Honolulu Ethics Commission  
**July 20, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

2016 JUL 14 PM 2:47  
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CITY CLERK  
C & C OF HONOLULU

**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

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- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. NEW BUSINESS



- A. **For Action: Motion to Approve the Open Session Minutes of the June 15, 2016 and June 23, 2016 Meetings.**
- B. **Staff's Administrative Report.**
  - 1. Work Reports from Staff Members.
  - 2. Report on Status of Move to Kapalama Hale.
  - 3. Report on Charter Amendments Affecting Ethics Laws or Ethics Commission.
- C. **For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.**
- D. **For Discussion and Action: Report from Commission Chair Regarding the Hiring of the Acting Executive Director/Associate Legal Counsel.**

The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities, and to discuss the hiring of the Acting Executive Director/Associate Legal Counsel.

- E. **For Discussion and Action: Status Reports from PIG Regarding the Hiring for Full-Time Positions of the Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.**

The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities, and to consider the hiring for the full time positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

- F. **For Discussion and Action: Status Reports from PIG Regarding the Filling of Temporary Positions of the Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.**

The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities, and to consider temporarily filling the positions of Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

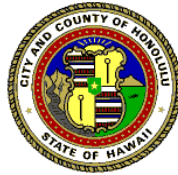
- A. **For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the June 15, 2016 and June 23, 2016 Meetings.**
- B. **For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorneys Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities with respect to Kealoha v. Totto, Civil No. 16-1-1166-6 GWBC in the Circuit Court of the First Circuit, State of Hawaii.**

IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



VICTORIA S. MARKS  
CHAIR

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: July 20, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Donna Y. L. Leong, Corporation Counsel,  
Department of the Corporation Counsel  
Paul S. Aoki, First Deputy, Department of the  
Corporation Counsel  
Robert H. Kohn, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Corey Lum, Civil Beat Cameraman  
Natalie Iwasa, Member of the Public  
Timothy J. Garry, Member of the Public and Candidate for  
Mayor, City and County of Honolulu

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE JULY 20, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:30 a.m. and asked that the record reflect that all Commissioners were present and that there was one Commissioner vacancy. Commissioner Yuen informed the Commission that there was a City Council committee hearing

the day before to approve the new Commissioner, but he still needs to be approved by the full Council.

Chair Marks asked that guests in attendance introduce themselves. Donna Leong, Corporation Counsel; Robert Kohn, Deputy Corporation Counsel; Paul Aoki, Deputy Corporation Counsel; Natalie Iwasa, Member of the Public; and Tim Garry, Member of the Public and Candidate for Mayor, introduced themselves.

## II. NEW BUSINESS

- A. For Action: Motion to Approve the Open Session Minutes of the June 15, 2016 and June 23, 2016 Meetings.

**Chair Marks asked for a motion to approve the open session minutes for both June 15 and June 23, 2016. Commissioner Suemori so moved and Vice-Chair Lilly seconded. Chair Marks then asked if there was any discussion, and Ms. Natalie Iwasa asked to testify.**

Ms. Iwasa asked if copies of the draft minutes could be made available for the public, and that pursuant to the Sunshine Boards and Commissions, at least a draft could be made available to the public in order for them to provide any corrections that may be applicable. She hoped that in the future it would become an opportunity for the public.

**Chair Marks asked if there were any questions for Ms. Iwasa or any other discussion, and since there were none, all were in favor in approving the Minutes and the motion carried unanimously.**

- B. Staff's Administrative Report.

1. Work Reports from Staff Members.

There was no discussion of this agenda item.

2. Report on the Status of Move to Kapalama Hale.

Chair Marks asked Legal Clerk Lisa Parker if there was any updated status about the move. Ms. Parker responded that there was an upcoming site visit on Thursday, July 21, 2016, at 3:30 p.m. Also, there was no specific date for the move.

Commissioner Silva asked to attend the site visit and about parking at Kapalama Hale for the Commissioners. Ms. Parker stated that she was still trying to secure courtesy parking for the Commissioners. Commissioner Silva also asked about public parking.

Corporation Counsel Donna Leong informed the Commission that the Managing Director had adopted a policy about Kapalama Hale parking and also asked if the

Commission wanted her to find out if it had been memorialized, since it did contemplate free parking for the volunteer Boards and Commissioners members, and the Commission agreed and confirmed.

### 3. Report on Charter Amendments: Affecting Ethics Laws

Chair Marks informed the Commission that Proposal 39 was regarding the Ethics Commission staff salaries, and that the EDLC's salary would be comparable to or would not exceed the salary of the First Deputy. The salary of all other attorneys would not exceed that of the EDLC. Chair Marks stated that the amendments would likely be on the ballot.

Chair Marks continued that the EC's proposal to amend the conflicts of interest and gift laws, Proposal 153, did not pass.

Corporation Counsel Donna Leong stated that the Charter Commission passed 27 out of 41 proposals through to the Committee on Submissions. Therefore, 27 proposals are still alive, but she was not sure if the proposals would come out of the Committee for the final ballot. Ms. Leong confirmed that Proposal 39 about the Ethics Commission attorneys' salaries did pass into Committee. Also, Charter Commissioner Paul Oshiro amended the Proposal based upon a recommendation from the Department of Human Resources that the EC attorney salaries not exceed the First Deputy Corporation Counsel's salary.

Ms. Natalie Iwasa testified that her understanding was that the proposals that were passed into the Submission Committee would be on the ballot. She also stated that she was disappointed with the Chair's testimony supporting the Administration's amendment to that Proposal, which limited the salary of the EDLC. She stated that the salary should be more comparable to the salary of the State Ethics Commission Director, which is about \$138,000, whereas limiting the EDLC's salary to the level of a Deputy Director in COR was much lower.

With regard to Proposal 153, Ms. Iwasa testified that she was glad that it didn't pass because there was a phrase that mentioned that gifts would apply to only "registered" lobbyists and therefore if a lobbyist was not registered, it would be a loophole for unregistered lobbyists to not have to worry about that particular law.

Chair Marks asked if there were any questions for Ms. Iwasa and whether there were any questions regarding the Charter Amendments. Since there were none, she moved on to the next item on the Agenda.

#### C. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.

Vice Chair Lilly informed the Commission that his Personnel Evaluation Form was the final draft. Commissioner Suemori requested additional revisions: (1) add "the Ethics Commission's responsibilities, training of employees, complaints and workflow" to the Vision and Mission section; (2) add everything that the Commission had been working on since she was appointed, i.e., Charter Commission, training, complaints and workflow, in the Working

with EC Members section; (3) Memos and Reports must be in writing; (4) workload reports must contain how many cases were opened, closed, and the total amount of cases; (5) include major duties and having a training plan for City employees, as well as clarification for presentation and meetings in the Work Quality and Work Quantity section.

Commissioner Silva stated that he understood that the training would be done with a video. Chair Marks stated that they may not be present if there's a video training.

Commissioner Suemori asked for clarification on the meaning of "presentations and meetings." Vice Chair Lilly responded that it meant "how it's conducted" or "how it's done." Commissioner Suemori further stated that she liked the video training and asked how it would be presented. Chair Marks responded that it was an in-person presentation or a presentation via the internet. Commissioner Suemori added that staff responsibilities, team-based cooperative work environment, organization and cases-flow must be included in the Supervising Subordinates section.

Vice Chair Lilly asked that Commissioner Suemori give her edits and additions to Legal Clerk Bigornia to be red-lined.

- D. For Discussion and Action: Report from Commission Chair Regarding the Hiring of the Acting Executive Director/Associate Legal Counsel.

**Chair Marks entertained a motion to ratify and approve the hiring of Laurie Wong-Nowinski as Associate Legal Counsel, and that until a full-time Executive Director and Legal Counsel is hired, she would be the Acting Executive Director. Commissioner Amano so moved, Commissioner Silva seconded.**

Vice Chair Lilly asked for clarification of Ms. Wong-Nowinski's start date, and Commissioner Silva confirmed that it was August 1, 2016. Chair Marks asked if there was any other discussion and Mr. Timothy Garry asked to testify.

Mr. Garry asked if the Commission could direct her to expedite complaint investigations involving Mayor Caldwell and the City Council since the primary election would be held on August 14 (sic) and the outcome of the investigations might have a material effect on the election. He stated that he filed his complaint on May 4, and because his complaint was not being timely investigated, he felt that his rights were being violated for lack of due process, since his complaint was against one of his opponents in the mayoral race. Mr. Garry further stated that the public should know if there's any validity to his complaints.

Commissioner Silva asked Mr. Garry if he had taken his complaints to the media, and Mr. Garry responded that he was on KGMB in the morning for an interview. Commissioner Silva explained that the Commission would not meet again until after the election and that they did not have an investigator. Mr. Garry responded that the Commission could call a special hearing before the primary election, and Commissioner Silva reiterated again that they had no investigator. Mr. Garry asked if Ms. Wong-Nowinski would be able to conduct the investigation, and Commissioner Silva disagreed. Chair Marks interjected that investigating was

part of her duties as an Associate Legal Counsel before an investigator was ever hired for the Ethics Commission.

Mr. Garry informed the Commission that he was very disappointed with them regarding the position they're in at the present, and asked for the status of the new Board Member approval. Chair Marks responded that no-one had consulted the Commission regarding the status, but she heard that the Committee approved the Resolution confirming the new Board Member and that the Resolution would be going to the full Council in their next meeting in two (2) weeks.

Vice Chair Lilly informed Mr. Garry that the staff had many other complaints in addition to his that are under investigation. The Commissioners are decision-makers and are not involved in the facts of the investigation, since they need to be impartial. Vice Chair Lilly continued that even in the best of circumstances, the possibility of having a resolution of a complaint, even assuming a charge had been brought, would take many months. It would be physically impossible for Mr. Garry's complaint, which was filed in May, to be concluded before August. In regard to Mr. Garry's disappointment of the Commission in handling his complaint, Vice Chair Lilly also explained that the person who is the subject of the complaint also has due process rights, and a trial or hearing cannot happen in three (3) months.

Mr. Garry responded that it was his understanding that there were older complaints that were stagnant. Vice Chair Lilly responded that the Commission was unaware of those complaints since they were not brought before the Commission. Mr. Garry complained about the Commission's lack of resources, and Vice Chair Lilly stated that even under the best circumstances the complaint could not be resolved within three (3) months. Mr. Garry responded that the process needed to be expedited and he could not understand why the process would take so long. Mr. Garry was disappointed that his complaint was not being worked on, and that the Commission did not have a backup plan given the circumstances leading up to the resignation of Chuck Totto.

Commissioner Suemori asked Mr. Garry if the Mayor responded to his allegations and he confirmed. Commissioner Suemori informed Mr. Garry that the Commission did not receive a copy of the response. Mr. Garry responded that the Mayor's PIO, Andrew Perreira, responded in public. Mr. Garry reiterated his frustration and also mentioned that the Commission should be more fluid.

Mr. Garry also stated that there was a public perception that there was no oversight over the largest public works project in its history to prevent waste fraud and abuse, because of a lag in state and city government ethics.

**Chair Marks reiterated the motion on the floor on whether to approve and ratify the hiring of Laurie Wong-Nowinski as the Associate Legal Counsel and Acting Executive Director and asked if there was any further discussion. Hearing none, all were in favor and the motion carried unanimously.**

- E. For Discussion and Action: Status Reports from PIG Regarding the Hiring for Full-Time Positions of the Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

Chair Marks informed the Commission that Legal Clerk Parker recently received an application for the Investigator III position and would forward copies to the PIG. Vice Chair Lilly asked for an update of the applications from the Department of Human Resources, and Commissioner Suemori responded that she split the applications with Commissioner Silva and that they were screening them.

- F. For Discussion and Action: Status Reports from PIG Regarding the Filling of Temporary Positions of the Executive Director and Legal Counsel, Associate Legal Counsel and Investigator.

Chair Marks asked if there was any further discussion regarding filling on a temporary basis for the Executive Director and Legal Counsel, Associate Legal Counsel and Investigator. Chair Marks acknowledged Ms. Natalie Iwasa to testify.

Ms. Iwasa requested that the Commission publicize the employment information on the website and Facebook page, so people can apply. Otherwise the Commission would be missing opportunities for other qualified people to apply.

Ms. Iwasa also commented on the hiring of Laurie Wong-Nowinski as Acting Executive Director. She was concerned about Ms. Wong-Nowinski's effectiveness given the public perceptions about Ms. Wong-Nowinski that lead up to the resignation of the former EDLC since she would now be acting as the EDLC. She asked the Commission to be aware of the public perception and to monitor the public's comments. She stated that if there were no effective staff people, the ethics program would suffer.

Ms. Iwasa further stated that with regard to the Kealoha v. Totto case, what was reported on Civil Beat was only a small sliver of the entire case. She stated that the questions asked were reasonable and she didn't think anything was out of the ordinary. She requested that her comments be included on the record because of her enormous concern with what's been happening with the Commission. She thanked the Commission for allowing her to testify. Chair Marks informed Ms. Iwasa that she could read the entire Complaint at the Circuit Court, and Commissioner Suemori also stated that it would provide her with some information.

**Chair Marks asked if there were any questions for Ms. Iwasa, and since there were none, she entertained a motion to go into executive session. Commissioner Yuen so moved, Commissioner Silva seconded and since there was no discussion, all were in favor and the motion carried unanimously.**



III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

A. **For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the June 15, 2016 and June 23, 2016 Meetings.**

The approval of the Executive Session Minutes for June 15, 2016 and June 23, 2016 was deferred to the next meeting.

B. **For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorneys Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities with respect to Kealoha v. Totto, Civil No. 16-1-1166-6 GWBC, in the Circuit Court of the First Circuit, State of Hawaii.**

The Commission met with Corporation Counsel Donna Leong, First Deputy Paul Aoki and Deputy Robert Kohn, in order to discuss the Kealoha v. Totto civil action. Chair stated that the Commission also discussed the status of hiring for vacant positions, and that the Commission would hold a special executive session meeting on August 1, 2016 at 11:00 a.m., to interview potential applicants.

**Commissioner Yuen moved and Commissioner Amano seconded that the Commission exit Executive Session to go into Open Session at 1:30 p.m.**

IV. ADJOURNMENT

**Chair Marks asked if there was anything else to discuss, and since there was no further discussion, Commissioner Amano moved to adjourn, Commissioner Silva seconded, all were in favor and the motion passed unanimously.**

The meeting adjourned at approximately 1:32 p.m.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



**AGENDA**

Honolulu Ethics Commission  
**August 1, 2016 – 11:00 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. NEW BUSINESS

No scheduled items.

- III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

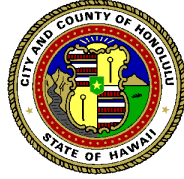
- A. **Hiring for the Full Time Positions of Executive Director and Legal Counsel, and Investigator.** The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to discuss the hiring for the full time positions of Executive Director and Legal Counsel, and Investigator, and to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect thereto.

- IV. ADJOURNMENT

ETHICS COMMISSION  
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KIRK CALDWELL  
MAYOR



ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: August 1, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Stanford Yuen, P.E., Commissioner  
Stephen Silva, Commissioner  
Leslie P. Chinn, Deputy Corporation Counsel,  
Department of the Corporation Counsel

Absent: Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE AUGUST 1, 2016 OPEN SESSION MEETING**

I. CALL TO ORDER

Chair Marks called the meeting to order at 11:05 a.m. and acknowledged that all six (6) Commissioners were present and there was no one present to give written testimony on the executive session agenda.

Chair Marks entertained a motion to exit open session to go into executive session. Commissioner Yuen so moved, Commissioner Silva seconded and since all were in favor, the motion passed unanimously.

II. NEW BUSINESS

No scheduled items.

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

A. **Hiring for the Full Time Positions of Executive Director and Legal Counsel, and Investigator.** The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (2) and (4), to discuss the hiring for the full time positions of Executive Director and Legal Counsel, and Investigator, and to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities with respect thereto.

III. ADJOURNMENT

The meeting adjourned at approximately 2:00 p.m.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



LAURIE A. WONG-NOWINSKI  
Acting Executive Director and Legal Counsel

AGENDA  
Honolulu Ethics Commission  
**August 9, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

I. CALL TO ORDER

II. NEW BUSINESS

- A. **For Action: Motion to Approve the Open Session Minutes of the August 1, 2016 Meeting.**
- B. **For Action: Ratification of Hiring Jan Yamane for the Full-Time Position of the Executive Director and Legal Counsel.**

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. **For Action: Motion to Approve the Executive Session Minutes of the August 1, 2016 Meeting.**

IV. ADJOURNMENT

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR

JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: August 9, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair  
Hon. Riki Amano (ret.), Commissioner  
Stephen Silva, Commissioner  
Peter S. Adler, Commissioner  
Jan K. Yamane, Executive Director and Legal Counsel  
Laurie A. Wong-Nowinski, Associate Legal Counsel  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Corey Lum, Civil Beat Cameraman  
Natalie Iwasa, Member of the Public  
Timothy J. Garry, Member of the Public and  
Candidate for Mayor

Absent: Hon. Allene Suemori (ret.), Commissioner  
Stanford Yuen, P.E., Commissioner

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

**MINUTES OF THE AUGUST 9, 2016 OPEN SESSION MEETING**

**I. CALL TO ORDER**

Chair Marks called the meeting to order at 11:00 a.m. and that for the record Commissioners Riki Amano, Steve Silva, Peter Adler, Mike Lilly, as well as herself were present.

Chair Marks stated that they were in attendance for an executive session meeting, and thereafter asked if anyone needed to testify.



Mr. Timothy Garry testified in regard to the complaint he filed against Mayor Caldwell on May 5, 2016. He informed the Commission that the ALC responded to his complaint via email the previous night and he had further discussed his complaint with her that morning.

Mr. Garry thanked the ALC for taking the time to speak with him about the status of his complaint. But he was not in agreement that his complaint should be closed. He requested that she conduct fact finding using the materials that were provided by Mr. Carroll Cox who had filed a similar complaint. He stated that he received permission from Mr. Cox to use the materials. He requested that if his complaint could not be re-opened, he wished to join in Mr. Cox's complaint against the Mayor.

Mr. Garry asked about the hiring of the Executive Director and wanted to know how many candidates were interviewed. He also asked if the Commission considered the Attorney General's investigation of the State Auditor's Office when they hired the new EDLC. Mr. Garry asked if there were any questions and then thanked the Commission.

Ms. Natalie Iwasa welcomed the ALC back and also welcomed Commissioner Adler. Ms. Iwasa was pleased that the Commission hired Ms. Yamane. Ms. Iwasa stated that she respected the work Ms. Yamane did as State Auditor. She especially appreciated the Auditor's Report on special funds. Ms. Iwasa expressed concern about a confidential investigation which was reported in the media several months ago with respect to the State Auditor. She expressed her belief that the lack of transparency would leave a cloud over the Commission, and people would appreciate disclosure of the subject matter of the investigation given the EDLC position and responsibilities. She contrasted the disclosure of the internal investigation of Chuck Totto and his separation agreement with respect to his role as EDLC which was publicized.

Chair Marks welcomed Peter Adler and thanked him for agreeing to be a volunteer on the Commission.

## II. NEW BUSINESS

### A. **For Action: Motion to Approve the Open Session Minutes of the August 1, 2016 Meeting.**

**Chair Marks requested a motion to approve the Open Session Minutes of the August 1, 2016 meeting. Vice Chair Lilly so moved, Commissioner Silva seconded the Motion. Chair Marks asked if there was any discussion to be had. Hearing none, all commissioners were in favor with the exception of Commissioner Adler who abstained. (4Ayes, 0 Noes, 1 Abstention).**

### B. **For Action: Ratification of Hiring Jan Yamane for the Full-Time Position of the Executive Director and Legal Counsel.**

**Chair Marks requested a motion to ratify the hiring of Jan Yamane for the full-time position as Executive Director and Legal Counsel. Vice Chair Lilly so moved,**

**Commissioner Amano seconded the Motion. Chair Marks asked if there was any discussion to be had. Hearing none, all commissioners were in favor with the exception of Commissioner Adler who abstained. (4 Ayes, 0 Noes, 1 Abstention).**

Chair Marks asked for a motion to exit open session to go into executive session. **Commissioner Silva so moved, Commissioner Amano seconded, all were in favor and the motion passed unanimously.**

[All persons except for the Commissioners and EDLC left the meeting room.]

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

A. **For Action: Motion to Approve the Executive Session Minutes of the August 1, 2016 Meeting.**

Chair Marks requested a motion to approve the Executive Session Minutes of the August 1, 2016 meeting. **Commissioner Amano so moved, Commissioner Silva seconded the Motion. All Commissioners were in favor with the exception of Commissioner Adler who abstained. (4 Ayes, 0 Noes, 1 Abstention).**

**Vice Chair Lilly moved to exit the executive session and go back into open session, Commissioner Amano seconded, and the Motion passed unanimously.**

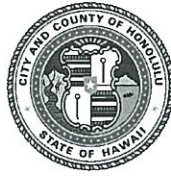
IV. ADJOURNMENT

**Chair Marks asked for a motion to adjourn, Commissioner Amano so moved, Commissioner Adler seconded, all were in favor and the motion passed unanimously.**

The meeting concluded at 12:07 p.m.

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091  
PHONE: (808) 768-7786 • FAX: (808) 768-7768 • EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov) • INTERNET: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)



KIRK CALDWELL  
MAYOR

JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**AGENDA**

Honolulu Ethics Commission  
**August 31, 2016 – 11:30 a.m.**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR  
SPEAK ON ANY AGENDA ITEM BELOW.**

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

**I. CALL TO ORDER**

II. NEW BUSINESS

- A. **For Action: Motion to Approve the Open Session Minutes of the July 20, 2016 and August 9, 2016 Meetings.**
- B. **Executive Director and Legal Counsel's Administrative Report (Written).**
  - 1. Work Reports from Staff Members.
  - 2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice).
  - 3. FY 2017 Budget Status.
  - 4. Ethics Training Program Status.
  - 5. Status of Charter Amendments.
- C. **For Discussion and Action: Expectations for the Executive Director and Legal Counsel.**
- D. **For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.**

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. **For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the June 15 and June 23, 2016, July 20, 2016 and August 9, 2016 Meetings.**
- B. **For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorneys Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities with respect to Kealoha v. Totto, Civil No. 16-1-1166-6 GWBC in the Circuit Court of the First Circuit, State of Hawaii.**

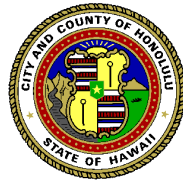
- C. **For Discussion: Pursuant to Hawaii Revised Statutes, Section 92-5(a)(2) and (4), to Consult with the Commission's Attorneys on Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities and Liabilities with Respect to the Hiring of an Investigator.**
- D. **For Discussion: Pursuant to HRS Section 92-5(a)(2), to Consider the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee and Discuss Retention of an Independent Ethics Investigator Due to a Conflict of Interest.**

#### IV. ADJOURNMENT

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date: August 31, 2016

Place: Standard Financial Plaza  
Conference Room, Suite 211

Present: Michael Lilly, Esq., Vice Chair  
Hon. Riki Amano (ret.), Commissioner  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner

Jan K. Yamane, Executive Director and Legal Counsel  
Laurie A. Wong-Nowinski, Associate Legal Counsel  
Donna Y. L. Leong, Corporation Counsel,  
Department of the Corporation Counsel  
Paul S. Aoki, First Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

Absent: Hon. Victoria Marks (ret.), Chair  
Peter S. Adler, Commissioner  
Hon. Allene Suemori (ret.), Commissioner

**MINUTES OF THE AUGUST 31, 2016 OPEN SESSION MEETING**

**I. CALL TO ORDER**

Vice Chair Lilly called the meeting to order at 11:46 a.m. and informed the Commission that with the exception of Chair Marks and Commissioners Suemori and Adler, present were

himself, fellow Commissioners Riki Amano, Stanford Yuen and Steve Silva. Vice Chair Lilly also announced that there were no members of the public present to testify.

## II. NEW BUSINESS

### A. **For Action: Motion to Approve the Open Session Minutes of the July 20, 2016 and August 9, 2016 Meetings.**

**Vice Chair Lilly requested a motion to approve the Open Session Minutes of the July 20 and August 9, 2016 meetings. It was moved by Commissioner Amano, seconded by Commissioner Silva, and unanimously carried to approve the open session minutes of the July 20 and August 9, 2016 meetings.**

### B. **Executive Director and Legal Counsel's Administrative Report (Written).**

#### 1. Work Reports from Staff Members.

The EDLC requested clarification if the Commission wanted summary reports instead of individual reports attached to the meeting materials. Vice Chair Lilly stated that a summary report would be satisfactory rather than attaching full reports, and the Commission agreed.

**Vice Chair Lilly asked for a motion to approve the submission of summary work reports as part of the meeting materials instead of attaching timesheets. It was moved by Commissioner Amano, seconded by Commissioner Yuen, and unanimously carried.**

The ALC asked the Commission if the attorneys and investigators should still keep time in tenths of an hour even though it would not be submitted to the Commissioners on a monthly basis. Vice Chair Lilly confirmed and also responded that the ALC should report any updates.

Vice Chair Lilly asked if there were any updates to the reports that the Commission had received. The EDLC asked to discuss her work report entitled, "Program of Work – FY2016-2017" ("Report"). She explained that the Report was created and used as part of her agenda for weekly staff meetings. She discussed the "Education and Outreach" section in her Report, explaining that the EDLC and ALC had started reaching out to all the Directors and Deputies, as well as the Councilmembers to meet them and find helpful resources.

The EDLC informed the Commission that the staff will be especially busy in January when the Financial Disclosures and Lobbyist Registrations are due. The EDLC also mentioned the "Rulemaking" section in her Report, which will be a new undertaking and that the ALC had already completed the initial research. She suggested that the EC establish a laws and

rules subcommittee to review draft rules in open forum, which would be noticed under the sunshine law and accessible to the public instead of forming a Permitted Interaction Group.

She further explained that a meeting of the subcommittee could be done at the end of the regular EC meetings, with a core group of Commissioners who could review the draft rules in time for the next meeting, since all recommendations would have to be referred to the full Commission for consideration.

Vice Chair Lilly and Commissioner Amano asked that the formation of a rulemaking subcommittee be placed on the agenda for the next meeting and the EDLC confirmed.

The EDLC continued to summarize her Report and informed the Commission that the office is scheduled to move to Kapālama Hale in late September 2016. EC staff has been electronically archiving documents in anticipation of the move. The EDLC informed the Commission that she was still in the process of hiring an Investigator. Commissioner Amano asked if it was an urgent need and the EDLC confirmed.

The EDLC stated that she wanted to include Strategic Planning as part of the EC's responsibilities. Vice Chair Lilly commented that he was unaware of any strategic plan while he has been with the Commission. The EDLC stated that she would like Commissioner Adler to help propose a strategic planning process. Commissioner Amano commented that she asked for a strategic plan from the former EDLC and that he may have been confused with the operating plan, and the Vice Chair agreed. The EDLC again advised the Commission that they needed to move forward with a strategic plan in order to develop objectives and goals. Vice Chair Lilly responded that with a strategic plan it would be much easier to prioritize the work flow, and Commissioner Amano commented that it would help with the budget.

The EDLC continued to summarize her Report and informed the Commission that staff is working on standard operating policies and procedures. Also, statistics and data would eventually be transposed into visual charts.

Finally, the EDLC discussed the status of Resolution 16-164 – Audit Request, which was pending third reading before the full Council on September 7, 2016.

Vice Chair Lilly asked the EDLC to elaborate on the audit process. The EDLC explained that there are usually three (3) stages to an audit, i.e., planning, field work, and final reporting. During the planning phase the auditor would review all aspects of the foundational pieces of the EC (Charter, any Ordinances and Resolutions that might touch and concern, the nature of the composition of the Commission, the work done, policies and procedures that guide the work, and anything else that's foundational).

The EDLC further explained that the auditor will determine its audit objectives, which typically include one high-level oversight/management objective and one on



operations. Based upon the audit objectives, the auditor develops its work plan. The auditor conducts field work to answer the questions posed in the objectives. Finally the report would be submitted to the City Council, the Mayor, and the Ethics Commission. She also explained that it could take a year to complete. She explained that the City Auditor testified at the Executive Management and Legal Affairs (EMLA) Committee meeting that he could not perform the audit of the EC because he has a conflict of interest in that he had worked very closely with the EDLC in her former position as the Acting State Auditor. It would be against professional auditing standards to have the City Auditor audit the former Acting State Auditor. Therefore, he would hire an independent third-party auditor. The City Auditor mentioned to the EDLC that he only has Twenty-Five Thousand Dollars (\$25,000.00) in his budget to contract for the audit; this amount likely would be inadequate to retain an independent third-party auditor. If he had to go back to City Council to ask for more funding, then this audit would take even longer, since he would have to build the cost into his budget.

Vice Chair Lilly asked if the Council amended the Resolution language in reference to the “former” EDLC and whether the amended language could resolve the conflict. The EDLC confirmed that the amendment still did not prevent a conflict since government auditors who attest to “Government Auditing Standards” set by the federal Government Accountability Office have high objectivity and independence standards.

Vice Chair Lilly expressed concern about the high cost of the contract. The EDLC agreed and responded that the City Auditor could probably do part of the planning work, which would not result in a conflict of interest, but once they get into developing the objectives and going forward with the field work, then that would touch and concern everything the office does and a conflict would result. The EDLC continued that typically an audit could look back to possibly a two (2) year period, and if the funding comes in June, the contract at that point could include or encompass this year, as well.

The EDLC informed the Commission that the audit will be part of the office staff’s program of work and that she has already briefed staff about general requests made by an auditor. Commissioner Yuen asked the EDLC who develops the work scope. The EDLC responded that it would be done by the contract auditors, assuming that the City Auditor contracts the audit to a third party. Commissioner Yuen then asked if the Commissioners or others would be able to have input with the development of the audit. The EDLC responded that typically during the planning stage, auditors do not reach out to individual Commissioners; that is done during the field work stage. The EDLC further stated that the auditor may interview former employees, sitting Commissioners, former Commissioners, including staff, and anyone that could have been involved with the Ethics Commission over the course of the audit period. Commissioner Yuen asked who approves the scope; the EDLC responded that no one approves it, rather, the auditors develop it. The auditor will send a letter to the Ethics Commission advising the Commission of the audit objectives and scope.

Commissioner Silva asked for clarification by Ms. Leong if there is a need for an outside audit because it would cost a lot of money when the new EDLC has an auditing

background and she could accomplish the same things as an independent auditor. Commissioner Silva informed the Commission that Councilmember Ozawa is requesting a courtesy visit with all the Commissioners. The EDLC informed the Commission that she met with Councilmember Ozawa recently as well.

Ms. Leong, agreed with Vice Chair Lilly that the audit was out of their hands because the City Council can determine when it wants an audit and whether the City Auditor would be doing the audit. Commissioner Silva asked if the timing of the audit could be changed, and Ms. Leong responded that maybe he could talk to Councilmember Ozawa. Vice Chair Lilly responded that Chair Marks had already submitted testimony in support of the audit and that an audit does have value. The EDLC agreed and added that audits are used to make improvements and that the EC could use the audit as a roadmap for the future. The EC may even be able to determine the audit recommendations prior to the final report, thereby giving the EC a head start on some of those items. Commissioner Amano asked for clarification on whether it would be a lot of work for the auditor or the EC. The EDLC responded that it could be a burden on the staff; for example, if there are no written policies and procedures, the auditors will ask staff to show them how things are done, walk them through the process. The EDLC further stated that the auditors would likely interview each Commissioner, as well as present and prior staff, in order to evaluate the Commission's oversight of its executive director and staff.

Commissioner Yuen asked whether the report would go to the City Council instead of the Administration. The EDLC responded that typically audit reports come out in a draft form that goes to the agency first, as well as to the administration. The EC would have the opportunity to comment on the draft. Those comments are then reviewed by the auditor and attached to the back of the audit report. The final report goes to the Mayor, the City Council, the Ethics Commission, and then to the public. Vice Chair Lilly asked if the draft could be amended based on the comments, and the EDLC responded that it could be amended if there are documents to discredit or challenge the factual determinations, but significant changes to findings is unlikely.

Commissioner Amano asked if there was any opposition to the Resolution during the hearing. The EDLC confirmed that there was none and that the City Councilmembers amended the Resolution to a Council Draft-1 ("CD-1") which added the term "former" before executive director.

2. General Statistics (Pending Complaints Requiring Investigation and Requests for Advice).

See Page 4, paragraph 1, under the EDLC's Written Reports.

3. FY 2017 Budget Status.

The EDLC informed the Commission that she worked with the Administrative Services Officer ("ASO"), Department of Corporation Counsel, and has submitted her first draft

of the EC's proposed budget numbers. She included a request for an additional Eight Thousand Dollars (\$8,000.00) to increase the number of licenses for the new Mindflash software training system. The ALC explained that Six Thousand Dollars (\$6,000.00) was allocated for this fiscal year, which supports 500 licenses for trainees. The cost for 1,000 licenses would be about Fourteen Thousand Dollars (\$14,000.00) per year—approximately Eight Thousand Dollars (\$8,000.00) more than what is currently in this fiscal year's budget.

#### 4. Ethics Training Program Status.

Vice Chair Lilly asked for clarification of the costs for Mindflash. The ALC explained that the cost was for the administration and maintenance of Mindflash, and the licenses to use the software program. Vice Chair Lilly asked whether the software program had a tracking system, and the ALC confirmed that it is called "LMS." It tracks completion of training, as well as quiz and survey results. Commissioner Amano asked whether the software administration would keep track of the data, and the ALC responded that staff would have access to the data, and that it sends out reminders for trainees to complete their training. Commissioner Amano asked if there was a need for any recommendations by the Commissioners, and the EDLC responded that there was no need for any during the initial budget proposal. Commissioner Amano stated that she was very pleased with high quality of the pilot training program. Commissioner Silva added that he was pleased as well. Vice Chair Lilly stated that he would like to see more local people or familiar faces in the video, like the Mayor, etc. The EDLC added that it's a wonderful opportunity to launch wide-spread training for City employees.

Commissioner Yuen asked how often the training would be updated; the ALC responded that the training would be updated every two (2) years, when the next round of training is required for City employees. She stated that she also hopes to use the Mindflash software to train managers and supervisors, or for other audiences as well. The ALC explained that she would like to update training regularly so that employees would be more motivated and therefore pay more attention to the training.

Vice Chair Lilly asked if there was anything else to add, and the ALC reported that she spoke with the staff of the Department of Information and Technology ("DIT") last year and that Mindflash was supported by DIT staff. A memo would be sent to the DIT Director to obtain formal approval. In addition, the ALC and EDLC met with the Department of Human Resources ("DHR") Director and Deputy Director, along with most of their division chiefs. The EDLC and ALC informed them of the Mindflash training, so they also have notice. Ms. Leong recommended that the ALC also inform the Department of Budget and Fiscal Services ("BFS") Director and the Managing Director, in order for them to have a "heads-up" when asking for the Fourteen Thousand Dollars (\$14,000.00) in the upcoming budget proposal.

## 5. Status of Charter Amendments.

The EDLC informed the Commission that there were no updates other than the proposed Charter Amendments being on the November ballot.

### C. **For Discussion and Action: Expectations for the Executive Director and Legal Counsel.**

Vice Chair Lilly informed the EDLC that he asked for the item to be on the agenda on a regular basis. The agenda item is not necessarily to address any specific issues, but rather an opportunity for the Commission to discuss any comments or concerns about the office. Also, the EDLC would have an opportunity to discuss findings, encounters, expectations, direction, or any thoughts or questions for the Commission.

The EDLC complimented the Commission for its talented staff. She was glad that they were on board. She also thanked the staff for their patience, for being immensely helpful, and for their institutional knowledge. The EDLC further stated that she wanted to see staff development and also mentioned that she had signed-up the ALC for a leadership training class, and that the trainer is a well-known national trainer. The EDLC also stated that she asked the legal clerks to be on the lookout for any skills development training, and that all staff could gain more skills in terms of learning visual presentation, Excel, and other kinds of data manipulation, and refreshing their overall computer skills. Commissioner Yuen recommended that the EDLC reference the Federal sector for training. The EDLC stated that she understood there were a lot of training sessions available. Commissioner Yuen agreed that it would be a good start, and that the key with the limited resources is to assign the proper priority.

The EDLC further informed the Commission that she would have a better understanding on how to prioritize her work report if there was a strategic plan with target goals. The EDLC continued that they should be realistic targets to shoot for and that those targets could be subject to change, if necessary. Vice Chair Lilly added that he often looked at the Commission as a board of directors setting the strategic goals and directions of the Commission in conjunction with the staff and executive director and informed the EDLC that the Commission would work together with her on suggestions, priorities, and direction. Thereafter, the Commission could set high-level direction of where they want the Commission to go and have the EDLC carry it out.

The Vice Chair and the EDLC discussed strategic planning in detail based on their work experiences. Commissioner Yuen informed the Commission that a strategic plan is imperative, and the EDLC agreed. She also added she had discussions with Deputy Corporation Counsel Kam and knows that the Commission is searching for clarity.

Commissioner Yuen asked for clarification about the Motion that the Commission passed earlier in the meeting regarding the summary reports and the ALC's timesheets. The ALC responded that currently her work report was a tenth of an hour timesheet and that Chair Marks

provided the template. But, in the future, she will be summarizing her work for the Commissioners for the meeting materials, but was instructed to still keep time even though the time sheets will not be submitted to the Commissioners on a monthly basis. Commissioner Yuen expressed his objections to a six-minute level of timekeeping and always thought it was micromanaging, although he agreed that a method of timekeeping was needed. Commissioner Yuen further stated that the motion they passed was too general and he wanted to defer to the EDLC on how work reports should be done. Vice Chair Lilly reminded Commissioner Yuen that the purpose was not micromanaging, but instead they wanted a record for time management of the workload and therefore needed to know how time was spent on each task in order to be more productive.

Commissioner Yuen concluded that he wanted the Commission to be more flexible on the timesheets and to defer more to the EDLC, and that in his opinion the management of the office is really for the EDLC, and that she should work it out with the Chair or the entire Commission, since it would make the task easier. The EDLC responded that the timesheets could be done at the present time for data purposes. Currently, the workload is split between EDLC and ALC. The ALC is working on the cases and requests for advice and EDLC is working on the administration. She also stated that over time she would like the ALC to work on some administrative matters.

**D. For Discussion and Action: Modification of Personnel Evaluation Form for the Executive Director and Legal Counsel.**

Vice Chair Lilly informed the Commission that the item wasn't a pressing issue and that they would not be evaluating the EDLC until next spring. Vice Chair Lilly explained that he recommended this form because it was used by the Board of the U.S.S. Missouri in evaluating its President. He felt that the form brought a consensus to each board member using numbers instead of summarizing like in the previous EDLC evaluation form. Vice Chair Lilly asked that the EDLC review the evaluation form and that he would be interested in her comments and whether it should be used. The EDLC responded that she would review the evaluation form.

**Vice Chair Lilly asked for a motion to go into executive session. It was moved by Commissioner Yuen, seconded by Commissioner Silva, and unanimously carried.**

At 2:15 p.m., before the Commission went back into executive session, Legal Clerk Parker handed-out copies of Ms. Natalie Iwasa's testimony, received at 11:19 a.m. that morning, to each Commissioner, and asked that it be noted on the record.

III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on

questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. **For Action: Pursuant to HRS Sec. 92-5(a)(2) and (a)(4), Motion to Approve the Minutes of the Executive Session of the June 15 and June 23, 2016, July 20, 2016 and August 9, 2016 Meetings.**

Vice Chair Lilly requested a motion to approve the Minutes of the Executive Session of the June 15 and June 23, 2016, July 20, 2016 and August 9, 2016 meetings. It was moved by Commissioner Amano, seconded by Commissioner Silva, and unanimously carried to approve the referenced Minutes.

- B. **For Discussion and Action: Pursuant to HRS Sec. 92-5(a)(4), Consultation with the Commission's Attorneys Regarding Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities, and Liabilities with respect to Kealoha v. Totto, Civil No. 16-1-1166-6 GWBC in the Circuit Court of the First Circuit, State of Hawaii.**

Vice Chair Lilly stated that there was discussion among the Commissioners about the issues.

- C. **For Discussion: Pursuant to HRS Sec. 92-5(a)(2) and (4), to Consult with the Commission's Attorneys on Questions and Issues Pertaining to the Commission's Powers, Duties, Privileges, Immunities and Liabilities with Respect to the Hiring of an Investigator.**

Vice Chair Lilly stated that the item was deferred.

- D. **For Discussion: Pursuant to HRS Section 92-5(a)(2), to Consider the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee and Discuss Retention of an Independent Ethics Investigator Due to a Conflict of Interest.**

Vice Chair Lilly stated that there was discussion among the Commissioners.

#### IV. ADJOURNMENT

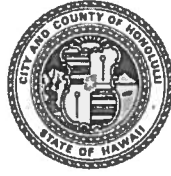
**Vice Chair Lilly requested a motion to adjourn. It was moved by Commissioner Amano, seconded by Commissioner Silva, and unanimously carried.**

The meeting was adjourned on or about 2:28 p.m.

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**AGENDA**

Date: September 21, 2016  
Time: 11:30 a.m.  
Place: Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

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**MEMBERS OF THE PUBLIC ARE ENCOURAGED TO SPEAK AND/OR SUBMIT  
WRITTEN TESTIMONY ON ANY AGENDA ITEM**

**ORDER OF BUSINESS**

- I. Call to Order, Public Notice, Quorum
- II. New Business
  - A. Chair's Report
    1. Announcements, Introductions, and Correspondence
    2. For Action: Approval of Open Session Minutes of August 31, 2016
    3. For Action: Approval of Executive Session Minutes of August 31, 2016

The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary
2. Statistics – Complaints, Requests for Advice
3. Budget
  - a. FY2017 Operating Budget
  - b. FY2018 Operating Budget Request
4. Ethics Training Program
5. Charter Amendments
6. Audit
7. COGEL Conference – December 2016

C. For Discussion and Action: Strategic Planning

D. For Discussion and Action: Create Standing Committee for Rule-Making

E. Expectations for the Executive Director and Legal Counsel

F. For Discussion and Action: Personnel Evaluation Form for the Executive Director and Legal Counsel

G. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii

The Commission may convene an executive session pursuant to Section 92-5(a) (4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

III. Executive Session

A. For Discussion and Action: Independent Ethics Investigator Retained Due to Conflict of Interest

Pursuant to Section 92-5(a), HRS, the Commission will consider the hire, evaluation, dismissal, or discipline of an officer or employee where consideration



of matters affecting privacy will be involved; and pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

#### IV. Adjournment

#### **SPEAKER REGISTRATION**

Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or by calling 768-7787 or 768-7791.

On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.

Each speaker is limited to a three-minute presentation on each item.

#### **WRITTEN TESTIMONY**

Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.

On the Day of the Meeting: Submit 10 copies of written testimony to Commission staff.

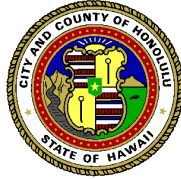
Individuals who require special needs accommodations are invited to contact the Honolulu Ethics Commission at 768-7787, via facsimile at 768-7768, or email [ethics@honolulu.gov](mailto:ethics@honolulu.gov) at least 4 **working days** in advance of the meeting.

All handouts will be posted at [www.honolulu.gov/ethics/meetings.html](http://www.honolulu.gov/ethics/meetings.html)

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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PHONE: (808) 768-7787 • FAX: (808) 768-7768 • EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov) • INTERNET: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place:       September 21, 2016  
                              Standard Financial Plaza  
                              Conference Room, Suite 211

Present:               Hon. Victoria Marks (ret.), Chair  
                              Michael Lilly, Esq., Vice Chair

Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Peter S. Adler, Commissioner

Jan K. Yamane, Executive Director and Legal Counsel  
Laurie A. Wong-Nowinski, Associate Legal Counsel  
Geoffrey Kam, Deputy Corporation Counsel,  
          Department of the Corporation Counsel (COR)  
Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

Adam LeFebvre, Mayor's Office  
Tom Berg, Member of the Public  
Al Frenzel, Member of the Public

Absent:               None

**MINUTES OF THE SEPTEMBER 21, 2016 OPEN SESSION MEETING**

I.       CALL TO ORDER, PUBLIC NOTICE, QUORUM

Chair Marks called the meeting to order at 11:35 a.m., and stated that all seven (7) Commissioners were present.

## II. NEW BUSINESS

### A. Chair's Report

1. Announcements, Introductions, and Correspondence

There was no discussion regarding this agenda item.

2. For Action: Approval of Open Session Minutes of August 31, 2016.

**Chair Marks requested a motion to approve the Open Session Minutes of the August 31, 2016 meeting. It was moved by Commissioner Yuen, seconded by Commissioner Silva, and unanimously carried to approve the Open Session Minutes of the August 31, 2016 meeting.**

3. For Action: Approval of the Executive Session Minutes of August 31, 2016.

The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

**The approval of the Executive Session Minutes of the August 31, 2016 meeting was deferred.**

### B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC reported that staff was busy making up for lost time and doing a lot of catch-up work, as reflected in her report.

The EDLC stated that the office move date to Kapalama Hale would be deferred from the original mid-October move date. She further informed the Commission that Legal Clerk Parker would be meeting with a Planner from the Department of Facility Maintenance (DFM) regarding the moving company, and that boxes could be requested at that time. The EDLC further stated that she would apprise the Commission of the actual date for the move and that coordination of meeting materials for the next EC meeting would be worked on and submitted to the Commission in its normal course.

Commissioner Amano asked that she be informed if the EC meeting would be held at Kapalama Hale or at the present EC office space. The EDLC agreed to inform the Commission.

Commissioner Silva asked if the staff's furniture would also be moved. The EDLC responded that some of the furniture was already at Kapalama Hale, and that the excess furniture assigned to the office was currently in storage. The EDLC stated that only tables, work-surfaces, a copier table and a few cabinets would be moved. Desks with returns were supposed to be provided at Kapalama Hale. Also, the planner had intended that the staff offices could be used for small meetings or interviews, and small tables would be provided subject to confirmation. Additional furniture donated by the Department of Community Services (DCS), such as book shelves, would also be moved to the new office at no cost.

Chair Marks responded that if the move was scheduled to occur during the October meeting, staff could change or cancel the meeting date. The EDLC agreed and responded that the office would not have functioning computer systems during the move and it would be difficult to conduct a meeting during that time.

The EDLC confirmed that the sunshine law requirement for the filing of the agenda would give the public ample notice of the change in office location.

The EDLC referenced the time allocation reflected in the ALC's work report, which was reflected in a pie chart on page 3 of the Open report. The EDLC stated that EC staff was surprised that the ALC spent almost 50 percent of her time on administration.

Chair Marks asked if keeping time had been a useful management tool. The EDLC confirmed and stated that her own time was almost all administrative due to budget preparation. Commissioner Silva and Chair Marks commented that the visual pie chart in the report was very useful.

## 2. Statistics – Complaints, Requests for Advice

There was no discussion regarding this agenda item.

## 3. Budget

### a. FY2017 Operating Budget

### b. FY2018 Operating Budget Request

The EDLC explained that attachment Open-2 of her report was a copy of the budget request that had been submitted, via COR to the Department of Budget and Fiscal Services (BFS). The EDLC noted that she was given the opportunity to sign-off on the transmittal instead of COR. The EDLC stated that she was pleased as it was a small but meaningful opportunity for the EC to be more independent.

The EDLC directed the Commission's attention to attachment Open-3 of her report which was then shown in color on a computer screen for the Commissioners to review. The EDLC showed pie charts of FY 2016 actual budget, FY 2017 appropriated budget, and FY 2018 requested budget. The EDLC explained that the FY 2016 actual budget showed 19 percent of the total budget was used for expenses while the remaining budget was used for salaries totaling \$375,000. The EDLC further explained that the next chart showed the FY 2017 appropriated budget and that expenses had increased to about 30 percent, while salaries decreased to 70 percent totaling \$485,000. Commissioner Amano asked if the salaries had been reduced. The EDLC responded that salaries remained flat, but there were a few increases based upon amounts that had been included by the BFS for collective bargaining increases for the clerks and investigator.

The EDLC continued that the next chart showing the FY 2018 requested budget was very similar to the FY 2017 appropriated budget. But, it didn't take into consideration the EC requests to attend the Council on Governmental Ethics Laws (COGEL) conference and for Mindflash training software licenses. The EDLC explained that the Mindflash expense was about \$14,000, which included 1,000 licenses for active trainees. The EDLC further stated with the additional licenses, she hoped to reach all 9,000 employees within a year.

Commissioner Amano asked how much Mindflash cost per trainee. The EDLC responded that it was about \$1.50 - \$2.00 per employee. The EDLC clarified that the current FY 2017 appropriated budget included \$6,000 for 500 Mindflash licenses.

Commissioner Amano commented that using Mindflash would be a more efficient and memorable way to train all city employees. Commissioner Silva asked for clarification of the frequency of required training. The ALC responded that the mandatory training is required every two years, but if all training could be done in one year, then staff could use the alternate year to work on training materials for future training courses.

The EDLC explained the difference between the appropriated and the actual budgets in response to Commissioner Yuen's inquiry. The EDLC explained that the actual budget reflects the variances from the appropriated budget caused by unanticipated actual expenses that arose during the year such as an increased need to retain professional services.

The EDLC further explained that the FY 2018 budget proposal was based on a flat line of the budget appropriation for FY 2017. The additional FY 2018 budget requests included funding for Mindflash, the COGEL conference and Commissioner parking at Kapalama Hale. Commissioner Yuen asked who appropriates the budget. The EDLC responded that the City Council appropriates the budget and that the EC is attached to COR's administrative budget, but the EC and COR have separate budgets. The EDLC further explained that the EC's budget appropriation gets amended through the budget process. The EC requested budget might be very different from the EC appropriated budget. Commissioner Yuen asked the EDLC if she was satisfied with how the budget process was progressing. The EDLC responded that she had a plan and referred to the next chart showing the appropriations for fiscal years 2016, 2017 and 2018.

The EDLC informed the Commission that she met with COR's Administrative Services Officer to discuss the 6-Year Expenditure Estimate (Estimate), which is a required annual budget submittal. This Estimate is a 6-year budget projection from FY 2018 through FY 2023. Historically, the Estimate default was a flat lined static budget. The EDLC informed the Commissioners that she did not want to proceed with a static Estimate because of the Commissioners concerns that there was inadequate staff resources.

The EDLC further explained that the Estimates included funding for a Deputy Director Legal Counsel position, which would be another managerial position. The addition of a Deputy Director would alter the organizational chart for the EC. The EDLC also mentioned the projected need for another investigator/education specialist position in about two-years, pursuant to the Commissioners' focus on education, and statistics showing the quantity and types of requests for advice and complaints received. The EDLC further informed the Commission that the Estimate includes staffing increase to seven (7) employees. The two (2) investigators would have to share office space at Kapalama Hale unless the EC could rent another office space within the building. The EDLC stated that she included additional costs for the second investigator such as computer equipment and furniture. Also, strategic planning should support and justify the Estimate.

Commissioner Amano stated that one of her concerns was having the chance to re-evaluate the Commission and its purpose. Commissioner Amano further stated that the combined prosecutorial, administrative, advisory and educational duties had been hard on the staff and unyielding for the Commission. She stated that strategic planning would be important for the Estimate. Also, based on resources and priorities, the Commission may not be able to conduct any in-house prosecutions. The EC might look to other agencies like the Office of Disciplinary Counsel (ODC) or Ethics Commissions in other States for models of efficiency.

Commissioner Silva asked for clarification of the scope of the audit of the Ethics Commission, and whether the audit will show needed changes. The EDLC responded that audits were focused on recommendations for current improvements, but the audit would not be as useful as a strategic plan for the future.

The EDLC asked the Commission if there were any other questions regarding the budget. Hearing none, she acknowledged and thanked Legal Clerk Bigornia for working on the charts. She further stated that charts would also be done for the requests for advice and complaints, and for reporting quarterly and fiscal year numbers.

Commissioner Silva asked if the new conference room at Kapalama Hale had visual equipment, and the EDLC responded that it was her understanding, that it would have large mounted flat screens.

Commissioner Adler asked for clarification of the Estimate and whether it was submitted every year. The EDLC confirmed and further explained that it is submitted near the

submission of the first budget proposal for the upcoming fiscal year, and that it could be amended every year going forward if necessary.

Vice Chair Lilly informed the Commission that he met with Councilmembers in for his upcoming confirmation hearing. Vice Chair Lilly informed the Councilmembers that his goal was to have an additional attorney and an additional investigator on staff, because of the heavy work load especially during a contested case hearing. Otherwise, during a contested case hearing, the entire staff devotes all their time to the hearing, while all the other work stops even though there's still a need to continue with the daily work of the Commission. Vice Chair Lilly also mentioned the strategic planning being done by Commissioner Adler will help to identify the Commission's vision and priorities.

Commissioner Yuen also added his thoughts and ideas about staff's workload and the possible transfer of prosecutorial duties to COR. Vice Chair Lilly responded that they should also keep in mind that the Ethics Commission is independent and separate and that the Commission is responsible for all City employees, including COR attorneys which is the reason for being independent.

Chair Marks responded that the EC could build funding to hire independent counsel into the budget. Commissioner Silva stated that any potential criminal law violation cases should be triaged to the State Attorney General or Department of the Prosecuting Attorney.

The EDLC stated that the EC had been challenged with understanding its goals and objectives, therefore it should utilize the present data in order to support request to increase the budget in the future.

Mr. Tom Berg, member of the public, asked to testify at this time because his testimony concerned the budget.

Chair Marks asked that each testifier state their names and stated that there was a three (3)-minute time limit on testimony before the EC.

Mr. Berg stated that when he was a City Councilmember, one of the first measures he introduced was to enhance the budget of the Ethics Commission. He asked for an increase of attorneys and staff, so investigation of complaints could be expedited.

Mr. Berg stated that he then introduced a measure to amend the scope of the rail project. The hearing on his measure took place on November 2, 2011. Mr. Berg stated that Councilmember Ikaika Anderson falsely informed the public that steel wheel rail system was locked-in pursuant to the City's contract with the FTA. If any changes were made to the rail system, the City would have to repay \$200 million dollars to the FTA. Mr. Berg claimed that Councilmember Anderson's actions were within the Ethics Commission's jurisdiction, because he misrepresented the true requirement of the FTA contract and misused his official position to sway the vote on Mr. Berg's proposed Charter amendment.

Mr. Berg testified that he met with former EDLC, Chuck Totto, on the same day after the vote, and informed Mr. Totto that 99.99 percent of all measures go on to a committee hearing. But the City Council suspended the rules on his legislation. Mr. Berg, stated that he became upset when he found out that after four years after filing of his complaint with Mr. Totto, Councilmember Anderson and four other councilmembers went to Washington D.C. to ask the FTA to amend the contract to change the type of rail system which is what he had been told wasn't a viable option during the hearing on his proposed Charter Amendment. In a letter dated April 3, 2015, Ms. Therese McMillan, Administrator of the FTA, explained that when the contract was signed on December 19, 2012 the City had locked-in with a steel wheel rail system. In 2015, Mr. Berg informed Mr. Totto, and his staff of evidence to support his complaint. Mr. Berg thought that his complaint was being investigated and when he asked for a status update, he was informed that his complaint was finally assigned a case number, EC No. 15-118.

Mr. Berg informed the Commission about his regular communication with Mr. Totto about alleged complaints when Mr. Berg was a councilmember, but no one had communicated with CM Anderson regarding his complaint. He also informed the Commission that a criminal investigation would be in order if his complaint is not investigated.

Chair Marks asked if there were any questions for Mr. Berg and thanked him for his testimony.

Mr. Al Frenzel, a member of the public, testified that his issue was also concerning the budget since he had filed his ethics complaint a year ago, and he had not received a status update yet. Mr. Frenzel continued that since then, he was made aware that the EC didn't have an investigator. He asked the Commission to support the executive director in hiring more staff, especially investigators, to investigate ethics complaints about the rail project.

Mr. Frenzel also recounted Mr. Berg's experience at the November 2011 public hearing in support of the effort to re-vote rail. Mr. Frenzel continued that immediately after the vote, Councilmember Anderson and Chair Martin did a "weird" administrative procedure by filing the action permanently in the record so that a re-vote on the rail could never come up again, and that it was an unethical act.

In conclusion, Mr. Frenzel informed the Commission that he highlighted what he had witnessed in his complaint, however, an investigation into his complaint was never conducted because the EC had no investigators. Mr. Frenzel informed the Commission that they should hire contract or temporary investigators.

Chair Marks asked if there were any questions for Mr. Frenzel, and Commissioner Yuen suggested that the testifiers submit their testimony in writing. Chair Marks responded that Mr. Berg submitted written testimony. Mr. Frenzel responded that his testimony was contained in his ethics complaint.

#### 4. Ethics Training Program



There was no discussion regarding this agenda item.

## 5. Charter Amendments

The EDLC reported that while she and Chair Mark's attended Vice Chair Lilly's reappointment to the EC during the Executive Matters and Legal Affairs Committee meeting, they also stayed for the Charter Amendment agenda item. The EDLC referenced a letter dated August 22, 2016 from David Rae, Chair of the Charter Commission to City Clerk, Glen Takahashi, stating that there would be twenty (20) proposed ballot initiatives. The EC's proposed amendment would be the second proposal on the ballot, which was a great placement. The letter also included descriptive language for each proposed amendment. The EDLC stated that the Charter Commission would inform the public about the proposals through the newspaper, and mail-outs to every household in the City and County of Honolulu. Also, out of a total of 154 initial proposed amendments, only 20 amendments survived the vetting process and the EC was fortunate that its proposal was one of the 20.

## 6. Audit

The EDLC informed the Commission that she and the ALC would be meeting with the City Auditor and his assigned staff, Troy Shimasaki, for an informational briefing. The discussion may include splitting-up the work between the City Auditor and an external independent auditor. The audit would likely take a year to complete.

## 7. COGEL Conference – December 2016

The EDLC directed the Commission's attention to the conference materials which were distributed for their information as the Open-5 attachment to her report. Chair Marks asked if funds from the current budget could be used to cover the conference expense. The EDLC responded that she could make a request, and that she had been encouraged to ask for funding to attend the conference. But, it was her understanding that there is a city-wide ban on travel.

Commissioner Silva asked if the ALC had attended any conferences, and the ALC responded that she attended a COGEL conference in December 2011, which was the last time anyone from the EC had gone to a COGEL conference. The EDLC asked if State agencies attended COGEL regularly, and the ALC confirmed and responded that the Executive Directors of the State Ethics Commission, State Campaign Spending Commission, and Office of Information Practices as well as their staff and commissioners had attended in the past.

### C. For Discussion and Action: Strategic Planning

The EDLC acknowledged and thanked Commissioner Adler for leading the EC with the strategic planning process. Commissioner Adler stated that he was ready for the challenge and welcomed any assistance. He had a simple plan with a proposed time table and would work with the EDLC to submit a proposal. Vice Chair Lilly asked how long it would take to complete. Commissioner Adler responded that he needed to submit a sequence of activities first,

and that he could do the planning during the regular or special EC meetings in short sessions instead of doing it all at once. Commissioner Suemori asked for submission of a plan to discuss at the next meeting, and Commissioner Adler confirmed. Commissioner Amano asked that strategic planning be kept as a standing agenda item for each meeting. The EDLC requested a formal vote. **Chair Marks asked for a motion to commence a formal discussion on the undertaking of a strategic plan under Commissioner Adler's leadership.**

**It was moved by Commissioner Amano, seconded by Commissioner Suemori, and unanimously carried to approve the motion.**

D. For Discussion and Action: Create Standing Committee for Rule-Making

The ALC informed the Commission that the need for administrative rule-making became apparent last Fall during the prosecution of the consolidated Councilmember gift cases. The issue arose again when the Hawaii State Teacher's Association (HSTA) appealed the Hawaii State Ethics Commission's guidance on teachers accepting gifts of travel when organizing school trips to the circuit court. The ALC briefed the resulting case: HSTA v. State Ethics Commission and had provided it to the Commissioners in the meeting materials. The ALC state that prior to 2005, the Commission had no authority to impose civil fines on anyone. The EC could only recommend disciplinary action to the city employee's appointing authority. At that time, there was not as much of a focus on notice and due process since the Commission couldn't penalize anyone. EC Advisory Opinions were specific to each particular factual situation and the EC could use the Advisory Opinions as guidance to what action could lead to an ethics violation in the future. The ALC further explained that in 2005 the former EDLC had introduced a proposed Charter Amendment that gave the Commission additional power to impose civil fines on exempt employees. The EC should have commenced with rule making at that time because the power to impose civil fines on exempt employees required notice and due process.

The ALC directed the Commission to her Confidential Memorandum which was attached as Open-6 to the meeting materials. Her memo listed numerous unanswered issues relating to gift laws that arose during the consolidated Councilmember cases because there were no formal rules or guidance. The EDLC stated that during her meet and greets with the Councilmembers, they wanted clear guidance so they could comply with the ethics laws.

The EDLC asked the Commission if they could think of other examples to add to the ALC's list. Commissioner Suemori asked the EDLC if she wanted a motion to start the rule-making assessment, discussion, dialogue or drafting. The EDLC responded that it would depend upon how the Commission wanted to proceed. The EC could either form a permitted interaction group (PIG) with a shorter term or a standing committee with a longer term.

The EDLC also stated that a standing committee would give the public an opportunity to attend the rulemaking discussions, since notice would be required under the sunshine law. The EDLC further stated that it would be a lot of work and the committee meetings could be done before or after the monthly meeting, or even mid-cycle.

Commissioner Adler asked if the rule-making could be harmonized with the State's rules. The ALC responded that the State Ethics Commission had an upcoming meeting in October and that rule-making was on the agenda. Chair Marks commented that the EDLC and ALC should attend that meeting. The EDLC confirmed.

Vice Chair Lilly stated that the State has a different gift statute than the City. Chair Marks asked if the State ethics laws had a gift cap, and the ALC responded in the negative. Commissioner Amano asked if the State had any rules, and the EDLC responded that they have procedural rules. Chair Marks informed the EC that over the summer, she tasked a law clerk to compare procedural rules from different agencies for the EC to consider when revising the EC's rules of procedure.

Vice Chair Lilly inquired if the ALC could draft rules for the Commission to review. Vice Chair Lilly stated that the ALC's list of issues regarding the gift laws dovetails with every one of his meetings with the Councilmembers. He personally feels that the Commission did not do a good enough job of educating the Councilmembers of the gift laws in the past. Further, the gift law was too ambiguous and it's not fair to hold people to a standard that had not been officially articulated.

Commissioner Amano asked the ALC how long it would take for her to complete a draft set of gift rules. The ALC responded that it would take a couple of months. The EDLC continued that the easier rules could be done first and the more difficult rules would take more time. Commissioner Amano asked that an outline be done first as guidance for the Commissioners.

Chair Marks asked whether the \$200 gift cap was just in the ordinance or also in the Charter. The ALC responded that it was in the gift ordinances only. Chair Marks asked the ALC for recommendations to change the ordinance in addition to proposing administrative rules. Chair Marks informed the ALC that she could contact Dale Lee or Ronnie Kawakami from the UH law school to get an extern to assist her.

Commissioner Amano commented that Chair Marks' law school extern did a good job gathering the procedural rules from different agencies, which was a good starting point to review and amend the EC rules of procedure.

Commissioner Adler stated that he knew of a retired judge advocate general (JAG) officer who was willing to volunteer his time for a project such as this since he was interested in the Commission's type of work.

Commissioner Suemori suggested that the law school extern could do one set of rules and the retired JAG officer could do another.

Commissioner Amano asked that the matter be put on the agenda to finalize the rule-making efforts.

Chair Marks asked if the ALC could also research gift laws applicable to the Judiciary.

The EDLC informed the Commission that proposed changes to an ordinance could be dangerous because once the proposed legislation is introduced, the EC has no control over what happens to the legislation, and it would be very difficult to change later. The EDLC further stated that the ordinance must be broader than the administrative rules. Administrative rules should implement and provide guidance on the ordinance. Commissioner Amano commented that the delegation of authority to issue rules is narrow.

The EDLC in conclusion stated that if the EC wants to proceed with rule-making, the EC needs to direct staff on how to proceed.

Commissioner Yuen asked if the retired JAG officer could draft proposed rules for the EC staff to review. Commissioner Adler responded that he would request that the retired JAG officer contact the EDLC or ALC. Chair Marks commented that he should be interviewed for fit, and Commissioner Adler agreed.

E. Expectations for the Executive Director and Legal Counsel

There was no discussion regarding this agenda item.

F. For Discussion and Action: Personnel Evaluation Form for the Executive Director and Legal Counsel

Vice Chair Lilly commented that an ideal time to review the form would be after strategic planning when goal identification is complete. The form could then be reviewed for consistency with the EC's goals. Commissioner Suemori asked the EDLC to provide input on the draft evaluation form.

The EDLC responded that the evaluation form focused more on legal work instead of administrative work. But, she has experienced that the duties of the EDLC are heavily administrative. This was especially true because she had entered the city as the EDLC during the beginning of the proposed budget cycle for FY 2018. The EDLC commented that budgeting and planning for the future are vital administrative tasks and are the life blood of the Commission.

Commissioner Suemori asked the EDLC whether she wanted to amend the form because there were hardly any administrative tasks being evaluated such as the budgetary process, and working with the city council or the executive branch. Commissioner Suemori stated that she personally felt that knowing more about the EDLC's administrative duties would be helpful to the Commission, since the Commissioners were only involved with hearing complaints. The EDLC stated that she would edit the form for consistency with goals identified in strategic planning.

Chair Marks informed the EDLC that the former EDLC had an evaluation form for the ALC and staff, and the EDLC responded that she had not seen one yet.

G. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii

The Commission may convene an executive session pursuant to Section 92-5(a) (4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

The EDLC announced that the three (3) Resolutions regarding the hiring of the three (3) retained counsel at \$100,000 each for the Ethics Commission, former EDLC, Charles Totto, and former investigator, Letha DeCaires, had been approved by City Council. COR was in the process of finalizing those Resolutions.

Commissioner Amano informed the Commission that Richard Nakamura was being retained as independent legal counsel for the Commission, and that he was a partner at Ayabe, Chong Nishimoto Sia & Nakamura. The EDLC responded that once the procurement for the attorneys are complete, she will invite Mr. Nakamura to the next EC meeting for a meet and greet.

The EDLC informed the Commission that she reached out to a couple of applicants for the investigator III position and only a few responded. Chair Marks asked the Commissioners to refer anyone they thought would be interested in the position to the EC staff. The EDLC responded that she was looking for someone with good analytical skills because much of the work would be interviewing and looking at documents, as well as understanding and learning the City.

Chair Marks suggested that the EDLC could inquire if the law school had any potential applicants.

**Chair Marks asked if there was any public testimony on executive session agenda items. Hearing none, she asked for a motion to move out of open session and into executive session.**

**It was moved by Commissioner Silva, seconded by Commission Yuen, and unanimously carried to approve the motion.**

III. Executive Session

A. For Discussion and Action: Independent Ethics Investigator Retained Due to Conflict of Interest

Pursuant to Section 92-5(a), HRS, the Commission will consider the hire,

evaluation, dismissal, or discipline of an officer or employee where consideration of matters affecting privacy will be involved; and pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

The Commissioners discussed the status of the Kealoha v. Totto. They also discussed the status of the independent investigation of alleged complaints. The Commission provided guidance to the EDLC on how to work with the retained independent investigator.

Chair Marks called for a motion to exit executive session and return to open session.

**It was moved by Commissioner Amano, seconded by Commissioner Suemori and unanimously carried to approve the motion.**

The EDLC informed the Commission that Ms. Natalie Iwasa submitted written testimony, and Chair Marks confirmed.

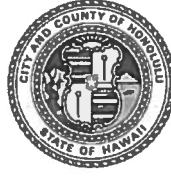
#### IV. ADJOURNMENT

**Chair Marks asked for a motion to adjourn the meeting. It was moved by Commissioner Yuen, seconded by Commissioner Silva, and unanimously carried to approve the motion.**

The meeting concluded at 1:52 p.m.

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091  
PHONE: (808) 768-7786 • FAX: (808) 768-7768 • EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov) • INTERNET: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)



KIRK CALDWELL  
MAYOR

JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**AGENDA**

Date: November 2, 2016  
Time: 11:30 a.m.  
Place: Standard Financial Plaza  
Conference Room, Suite 311  
715 South King Street  
Honolulu, Hawaii 96813

2016 OCT 26 PM 1:54  
CITY OF HONOLULU

**Notice:** The Honolulu Ethics Commission is moving offices. As of Monday, November 14, 2016, our new address will be: **Kapālama Hale, 925 Dillingham Boulevard, Suite 190, Honolulu, Hawaii 96817.**

**MEMBERS OF THE PUBLIC ARE ENCOURAGED TO SPEAK  
AND/OR SUBMIT WRITTEN TESTIMONY ON ANY AGENDA ITEM**

**ORDER OF BUSINESS**

- I. Call to Order, Public Notice, Quorum
- II. New Business
  - A. Chair's Report
    1. Announcements, Introductions, and Correspondence
    2. For Action: Approval of Open Session Minutes of September 21, 2016
    3. For Action: Approval of Executive Session Minutes of the August 31, 2016 and September 21, 2016 meetings

The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary
2. Statistics – Complaints, Requests for Advice
3. Budget
  - a. FY2017 Operating Budget
  - b. FY2018 Operating Budget Request
4. Ethics Training Program
5. Charter Amendments
6. Audit
7. COGEL Conference – December 2016

C. For Discussion: Strategic Planning

D. For Discussion: Rule-Making

1. Introduction – John (Jack) McDonald, Esq., MPA Intern

E. Expectations for the Executive Director and Legal Counsel

F. For Discussion and Action: Personnel Evaluation Form for the Executive Director and Legal Counsel

III. Executive Session

- A. For Decision: Whether an employee's request to be an Uber/Lyft driver is incompatible with the employee's official duties in violation of RCH Sec. 11-102.1(c)?

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.



- B. For Discussion: Case Brief – Boyd v. Hawaii State Ethics Commission, SCWC-14-0000352 (Haw. July 19, 2016)

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- C. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii.

1. Introduction – Richard Nakamura, Esq., Chong Nishimoto Sia Nakamura & Goya

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- D. For Discussion: Independent Ethics Investigator Retained Due to Conflict of Interest

Pursuant to Section 92-5(a), HRS, the Commission will consider the hire, evaluation, dismissal, or discipline of an officer or employee where consideration of matters affecting privacy will be involved; and pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

#### IV. Adjournment

### **SPEAKER REGISTRATION**

Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or by calling 768-7787 or 768-7791.

On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.

Each speaker is limited to a three-minute presentation on each item.

### **WRITTEN TESTIMONY**

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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: November 2, 2016  
Standard Financial Plaza  
Conference Room, Suite 311

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair

Peter S. Adler, Commissioner  
Stephen Silva, Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Stanford Yuen, P.E., Commissioner

Jan K. Yamane, Executive Director and Legal Counsel  
Laurie A. Wong-Nowinski, Associate Legal Counsel  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel ("COR")  
Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I

Employees of a city department (Executive Session only)

Absent: Hon. Riki Amano (ret.), Commissioner

**MINUTES OF THE NOVEMBER 2, 2016 OPEN SESSION MEETING**

**I. CALL TO ORDER, PUBLIC NOTICE, QUORUM**

Chair Marks called the meeting to order at 11:48 a.m., and announced that she and Commissioners Suemori, Silva, Adler and Vice Chair Lilly were present. Commissioner Yuen would be arriving at the meeting around noon.

## II. NEW BUSINESS

### A. Chair's Report

#### 1. Announcements, Introductions, and Correspondence

None.

#### 2. For Action: Approval of Open Session Minutes of September 21, 2016.

**Chair Marks requested a motion to approve the Open Session Minutes of the September 21, 2016 meeting. It was moved by Vice Chair Lilly, seconded by Commissioner Silva, and unanimously carried to approve the Open Session Minutes of the September 21, 2016 meeting.**

#### 3. For Action: Approval of the Executive Session Minutes of August 31, 2016 and September 21, 2016 meetings.

**Chair Marks requested a motion to approve the Executive Session Minutes of the August 31, 2016 and September 21, 2016 meetings. It was moved by Commissioner Adler, seconded by Commissioner Silva, and unanimously carried to approve the Executive Session Minutes of the August 31, 2016 and September 21, 2016 meetings.**

### B. Executive Director and Legal Counsel's Report

#### 1. Staff Work Reports Summary

The EDLC referenced the OPEN-1 attachments to the meeting materials that showed an agenda of weekly staff meetings. Staff was continuing to work while simultaneously preparing for the move to Kapālama Hale. Staff was spending significant time packing the office and preparing documents for electronic archiving. The coordination and preparation for the move were more complicated and time-consuming than anticipated. Staff continued to have discussions with administration to settle issues related to furniture and parking.

The EDLC directed the Commission to a copy of the office floor plan. She stated that the move was scheduled for November 12, 2016. Department of Information Technology ("DIT") staff were scheduled to connect the phones and computers on November 13, 2016. Assuming everything goes according to the plan, the office should be connected and ready for unpacking on Monday, November 14. The EDLC informed the Commission that staff's last day at 715 South King Street would be on Thursday, November 10, and that notices of the move were posted on the EC website and emails.

Chair Marks asked the EDLC if staff would be present over the weekend to supervise the move. The EDLC responded that Legal Clerk Parker and the ALC will meet the

movers at 715 South King Street to coordinate pick-up and delivery of boxes and furniture to Kapālama Hale. Chair Marks offered to help unpack the office.

The EDLC stated that staff's daily work was suffering because the move date was not finalized earlier. She stated that another agency would be moving in to the first floor of Kapālama Hale the subsequent week, and other agencies would be moving at a later date.

Commissioner Silva asked if staff would be the first group moving to Kapālama Hale. The EDLC responded that another office had already moved in July 2016 in the foyer area, but the Ethics' office would be in the back area. A security guard would be stationed at the front entrance to the building to check-in anyone entering the building. Also, a peep-hole was requested for the Commission office door.

Chair Marks asked if access would be by a Sonitrol card; the EDLC responded that she did not know. Further discussion continued regarding security in the front, Commissioner access to the conference room, and parking.

The EDLC asked the Commission if they were agreeable to hear Agenda Item III.A. out of order because the parties were present.

### **AGENDA ITEM TAKEN OUT OF ORDER**

#### **III. Executive Session**

- A. For Decision: Whether an Employee's Request to be an Uber/Lyft Driver is Incompatible with the Employee's Official Duties in Violation of RCH Sec. 11-102.1(c)?

**Vice Chair Lilly moved to exit open session and go into executive session. Commissioner Silva seconded the motion and it was unanimously carried to approve the motion to go into executive session.**

[Commissioner Yuen entered the meeting at 12:05 p.m.]

The Commission heard from the parties present. The parties exited the meeting room so the Commission could discuss the matter with its attorneys. Thereafter, the parties were brought back into the meeting room.

Chair Marks thanked all the witnesses for their comments and testimony. She stated that after consideration, the Commission found that there was no conflict of interest for a non-law enforcement civilian employee computer programmer to become an Uber/Lyft Driver. Staff would draft a formal advisory opinion for the Commission's approval.

**Chair Marks asked for a motion to exit executive session and return to open session. It was moved by Commissioner Suemori, seconded by Vice Chair Lilly, and unanimously carried to approve the motion to return to open session.**

**RETURN TO AGENDA ITEM II.B.2.**

**2. Statistics – Complaints, Requests for Advice**

The EDLC explained the ALC's work report which showed that majority of her time last month was spent performing administrative work, and the amount of time increased this past month. Vice Chair Lilly asked if her administrative work included the move, and the EDLC confirmed.

Chair Marks commented that timesheets were worthwhile because of the data that would be very useful in the future, notwithstanding the opposition by Commissioner Yuen. The EDLC responded that it was a built-in justification for budget requests in the future. Vice Chair Lilly responded that timesheets would be helpful when another investigator or other staff member is needed.

The EDLC explained the Open – 2 attachments to the meeting materials. These were bar graphs of the EC Complaints, FY 2015 and 2016 by quarter. The last chart depicted Ethics Commission Complaints, FY2012-FY2016, with a line showing open cases.

The EDLC informed the Commission that she would be working with Legal Clerk Bigornia in developing more charts to visually show statistics, rather than using the tables with only numbers. Chair Marks commented that specific categories of complaints and requests for advice should be tracked for educational planning purposes. The EDLC responded staff has had internal discussions about each department's issues, including Councilmember gift issues.

Commissioner Adler asked if there were numbers available for statistical purposes prior to 2012. Legal Clerk Bigornia responded that she believed that the statistics went back to 2010, but that she would need to confirm. Commissioner Adler responded that the additional statistics would be helpful for the specific strategy and planning. The EDLC added that for trending purposes the statistics should use data compiled over the last 10 years.

**3. Budget**

**a. FY2017 Operating Budget**

No updates.

**b. FY2018 Operating Budget Request**

No significant changes to the request, except for receiving additional questions from the Department of Budget and Fiscal Services ("BFS").

#### 4. Ethics Training Program

The EDLC informed the Commission that the ALC and Legal Clerk Bigornia worked hard on Mindflash over the last year. The administration approved the content and the software for purchase, and the training program was ready to be launched. But, on October 24, 2016, the EDLC was asked to attend a meeting with the DIT Director and his staff. During that meeting, the Director directed the EDLC not to purchase the Mindflash software licenses because he wanted to develop an in-house training software program for Ethics to use for its city-wide training program. That software was being developed for the Department of Human Resources (“DHR”). The program would be free and based on open-sourced software called Moodle.

Thereafter, DIT transferred the ethics training content from Mindflash to Moodle. The ALC and Legal Clerk Bigornia continued to work with DIT to finalize the training, especially with reporting details since Ethics has limited staff resources.

Vice Chair Lilly agreed that the administration and reporting was a critical part of the software since staff would need to know who is actually being trained and if it’s effective. The EDLC stated that during their meeting they learned that there are about 9,500 City employees, of which 4,500 do not have access to a work computer. The EDLC explained ideas to train these employees, such as transferring the Mindflash-Moodle content onto a video.

Commissioner Adler asked if there was a test and certification at the end, and the EDLC and ALC confirmed. The EDLC added that for those employees that need to watch a video, DIT suggested a Scantron “bubble” test/regular paper test, filling-in the bubble with a No. 2 pencil, as well as doing self-scoring, and thereafter their test would be filed in their personnel folders.

The EDLC stated that she had to withdraw her fiscal year 2018 budget request for additional Mindflash licenses; but, she reserved the right to request it again in the event the DIT software program does not have the required capabilities. The sudden change in direction has delayed the launch of mandatory ethics training required every two years.

#### 5. Charter Amendments

The EC Charter Amendment was number 2 on the ballot. There was no additional discussion.

#### 6. Audit

The EDLC reported that she and the ALC met with the City Auditor on September 22, 2016, and he told her that the audit requested by City Council would be in three parts: First, the control self-assessment will be conducted by the EDLC. This portion is like a mini operational audit, which could be used year after year as a tool. Second, the City Auditor would conduct in-house research comparing best practices from different jurisdictions. Third,

the City Auditor will contract with an outside independent auditor for the oversight/management portion. The City Auditor will include the cost of retaining an independent auditor in his next budget cycle request.

Parts 1 and 2 of the audit are due by February 2017; Part 3 is due by December 2017. The EDLC explained that she would not be able to assist in reducing the backlog of work since all of her time would be spent on completing Part 1 of the audit by February 2017. She also mentioned that it would tie-in nicely with the strategic planning, and Commissioner Adler agreed.

The EDLC concluded that the contracted audit would have an impact on staff resources since they would be using staff's offices to conduct their work, including interviews, and that each Commissioner would be interviewed as part of their process.

#### 7. COGEL Conference – December 2016

The EDLC reported that she would not attend COGEL because of the current affairs of the office, including: moving to Kapālama Hale, preparing the control self-assessment for the audit, and working on the backlog and incoming work. But, she would submit a budget request for FY 2018 to attend COGEL.

#### C. For Discussion: Strategic Planning

Commissioner Adler informed the EDLC that he would provide an update in the future. Commissioner Adler stated that he gathered comments from Commissioners and staff, explaining the issues that needed to be addressed in a strategic plan. Commissioner Adler concluded that he was ready to move forward with strategic planning. He suggested that the Commission could work on strategic planning during the already scheduled EC meetings, rather than scheduling long separate sessions, and the EDLC agreed.

Chair Marks responded that logistically, an extra meeting should take place as a strategic planning kick-off. Thereafter, she would like to extend the Commission meetings until 2:30 for strategic planning. The EDLC asked if the first strategic planning session should be at the next Commission meeting on December 21. Commissioner Silva stated that he would be unavailable for that meeting.

#### D. For Discussion: Rule-Making

##### 1. Introduction – John (Jack) McDonald, Esq., MPA Intern

The EDLC introduced Mr. Jack McDonald to the Commission and asked that he introduce himself. Mr. McDonald informed the Commission that he is now retired after 20 years as a Judge Advocate with the Navy. He has done a lot of overseas development work. He is pursuing his Master's Degree in public administration at the University of Hawaii (UH) and one of the classes requires a 120 hour practicum.



Mr. McDonald stated that after 30 plus years of public service he was very interested in the research. As a Judge Advocate in the Navy, he drafted many briefs and advised senior officers on various ethical standards for the executive branch, civic rules for military officers. He was glad to work with staff to propose substantive rules and complete his practicum and internship.

Chair Marks thanked Mr. McDonald. The EDLC commented that the EC staff was very excited to be working with Mr. McDonald, not only for his fantastic resume, but also because he brings a Federal perspective that will be immensely helpful, especially when working on lobbyist and gift issues.

Commissioner Adler commented that UH has an up and coming public administration program and that he knows a lot of professors. Mr. McDonald stated that there are about 25 people admitted each year for the Fall. At least 10 of those students are from out of the country, with many from the Pacific, so there are a lot of different perspectives on administration.

Mr. McDonald also informed the Commission that he had a co-worker in mind to carry on the internship after he completes his 120 hours.

E. Expectations for the Executive Director and Legal Counsel

The EDLC informed the Commission that the expectations would need to wait until the strategic planning could align the goals of the Commission and staff.

F. For Discussion and Action: Personnel Evaluation Form for the Executive Director and Legal Counsel

There was nothing reported.

Chair Marks asked the ALC if preparations were being made for the Commission's new investigator. The ALC confirmed and also mentioned that she would provide the investigator with several resources. The ALC stated that she plans to show the investigator the City's Intranet system and the Ethics I-Drive. Chair Marks also asked the ALC to inform the Investigator about case priorities. The ALC confirmed.

The EDLC informed the Commission that the new investigator was coming from the Department of Commerce and Consumer Affairs, Securities Enforcement Branch, so she comes with years of investigator experience. Staff is pleased to bring her on board, and she seems excited to be working with the Commission.

III. Executive Session

A. For Decision: Whether an Employee's Request to be an Uber/Lyft Driver is

Incompatible with the Employee's Official Duties in Violation of RCH Sec. 11-102.1(c)?

This Agenda Item was taken out of order. Please see above for minutes of the discussion.

B. For Discussion: Case Brief – Boyd v. Hawaii State Ethics Commission, SCWC-14-0000352 (Haw. July 19, 2016)

The EDLC informed the Commission that there was nothing to report on the matter and that the ALC's memo was self-explanatory. The ALC informed the Commission that there was only a remote possibility that the same issue could arise in the future, and Chair Marks agreed.

C. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii.

1. Introduction – Richard Nakamura, Esq., Chong Nishimoto Sia Nakamura & Goya

There was nothing reported.

D. For Discussion: Independent Ethics Investigator Retained Due to Conflict of Interest

The EDLC had no updates to present, and Chair Marks asked that the EDLC contact the independent ethics investigator. The EDLC said she was unable to reach the investigator. Chair Marks asked the EDLC if Commissioner Amano wrote to the investigator directing the investigator to respond, and the EDLC confirmed.

IV. ADJOURNMENT

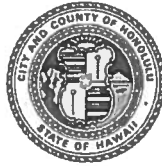
**Chair Marks asked for a motion to adjourn the meeting. It was moved by Vice Chair Lilly, seconded by Commissioner Silva and unanimously carried to approve the motion to adjourn the meeting.**

The meeting concluded at 2:20 p.m.

**ETHICS COMMISSION  
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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**AGENDA**

Date: December 7, 2016  
Time: 11:30 a.m.  
Place: Standard Financial Plaza  
Conference Room, Suite 311  
715 South King Street  
Honolulu, Hawaii 96813

2016 NOV 30 AM 9:18

City of Honolulu  
Office of the Mayor  
City Hall  
Honolulu, HI 96813

**MEMBERS OF THE PUBLIC ARE ENCOURAGED TO SPEAK AND/OR SUBMIT  
WRITTEN TESTIMONY ON ANY AGENDA ITEM**

**ORDER OF BUSINESS**

- I. Call to Order, Public Notice, Quorum
- II. Executive Session
  - A. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii  
  
Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.
- III. Adjournment

**SPEAKER REGISTRATION**

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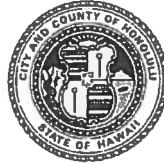
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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**AGENDA**

Date: December 21, 2016  
Time: 11:30 a.m.  
Place: Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

2016 DEC 14 AM 9:28

**MEMBERS OF THE PUBLIC ARE ENCOURAGED TO SPEAK  
AND/OR SUBMIT WRITTEN TESTIMONY ON ANY AGENDA ITEM**

**ORDER OF BUSINESS**

- I. Call to Order, Public Notice, Quorum
- II. New Business
  - A. Chair's Report
    1. Announcements, Introductions, and Correspondence
    2. For Action: Approval of Open Session Minutes of November 2, 2016
    3. For Action: Approval of Executive Session Minutes of the November 2, 2016 and December 7, 2016 meetings

The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary
2. Statistics – Complaints, Requests for Advice
3. Budget
  - a. FY2017 Operating Budget
  - b. FY2018 Operating Budget Request
4. Ethics Training Program
5. Charter Amendments
6. Audit

C. Rule-Making

D. For Decision: Issues Relating to Independent Expenditures Made by Super Political Action Committees ("Super PACs") for the Benefit of a City Officer

1. Do "Independent Expenditures" Made by Super PACs for the Benefit of a City Officer Create a Conflict of Interest Under Revised Charter of Honolulu (RCH) Section 11-102.1(a); and
2. Do "Independent Expenditures" Made by Super PACs for the Benefit of a City Officer Create an Interest That Might Reasonably Tend to Create a Conflict With the Public Interest Requiring Disclosure Under RCH Section 11-103 Any Time Such Conflict Becomes Apparent?

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

E. For Decision: Are the Conclusions in Advisory Opinion No. 76 (December 21, 1977) Still Correct Under Current Laws; and

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

F. For Decision: Issues Relating to a Councilmember's Receipt of 40 Percent or More of Campaign Contributions by a Special Interest Group

1. Whether a Councilmember's Receipt of 40 Percent or More of Campaign Contributions by a Special Interest Group Creates a Conflict of Interest When the Councilmember Has to Make Official Decisions Affecting the Special Interest Group; and
2. If Question 1 is Answered in the Positive, Were the City Council's Five Votes Approving the Ho'opili Project (Bill 3, 2015) Invalid?

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

III. Executive Session

- A. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii

Pursuant to Section 92-5(a)(4), HRS, the Commission will consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

- B. For Discussion: Independent Ethics Investigator Retained Due to Conflict of Interest

Pursuant to Section 92-5(a), HRS, the Commission will consider the hire, evaluation, dismissal, or discipline of an officer or employee where consideration of matters affecting privacy will be involved; and pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

IV. For Discussion: Strategic Planning

V. Adjournment

**SPEAKER REGISTRATION**

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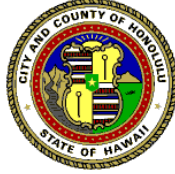
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CITY AND COUNTY OF HONOLULU**

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MAYOR



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AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: December 21, 2016  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair  
Michael Lilly, Esq., Vice Chair

Peter S. Adler, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Stanford Yuen, P.E., Commissioner

Jan K. Yamane, Executive Director and Legal Counsel  
Laurie A. Wong-Nowinski, Associate Legal Counsel  
Janice K. Yonamine, Investigator  
Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I  
John (Jack) McDonald, Esq., MPA Intern  
Geoffrey Kam, Deputy Corporation Counsel,  
Department of the Corporation Counsel ("COR")  
Moana Yost, Deputy Corporation Counsel,  
Department of the Corporation Counsel ("COR")

Dr. Kioni Dudley, Member of the Public  
Doris Dudley, Member of the Public  
Wayne Yoshioka, Political Reporter, Hawaii Public Radio  
Manolo Morales, Reporter, KHON2 News  
Gregg Lau, Cameraman, KHON2 News  
Sophie Cocke, Reporter, Star Advertiser

Absent: Stephen Silva, Commissioner

## **MINUTES OF THE DECEMBER 21, 2016 OPEN SESSION MEETING**

### **I. CALL TO ORDER, PUBLIC NOTICE, QUORUM**

Chair Marks called the meeting to order at 11:30 a.m., and announced that she and all the Commissioners were present except for Commissioner Silva.

Chair Marks asked that everyone introduce themselves. Wayne Yoshioka, Hawaii Public Radio, Manolo Morales and Gregg Lau, KHON2 News, Doris Dudley, Dr. Kioni Dudley's wife, and Dr. Kioni Dudley, Deputy Corporation Counsel Moana Yost, and Deputy Corporation Counsel Geoffrey Kam introduced themselves.

### **II. NEW BUSINESS**

#### **A. Chair's Report**

##### **1. Announcements, Introductions, and Correspondence**

None.

##### **2. For Action: Approval of Open Session Minutes of November 2, 2016.**

**Chair Marks requested a motion to approve the Open Session Minutes of the November 2, 2016 meeting. It was moved by Vice Chair Lilly, seconded by Commissioner Yuen, and unanimously carried to approve the Open Session Minutes of the November 2, 2016 meeting.**

##### **3. For Action: Approval of the Executive Session Minutes of November 2, 2016, and December 7, 2016 meetings.**

**Chair Marks requested a motion to approve the Executive Session Minutes of the November 2, 2016 and December 7, 2016 meetings. It was moved by Vice Chair Lilly, seconded by Commissioner Yuen, and unanimously carried to approve the Executive Session Minutes of the November 2 and December 7, 2016 meetings.**

#### **B. Executive Director and Legal Counsel's Report**

##### **1. Staff Work Reports Summary**

The EDLC confirmed that staff moved into Kapalama Hale on Dillingham Boulevard. In order for the Commission to hold the next meeting at Kapalama Hale, conference room furniture was needed.

The EDLC introduced the new investigator, Janice Yonamine, who joined the staff in November. The EDLC was very pleased to have her onboard and Ms. Yonamine was already carrying a case load. The EDLC further informed the Commission that Ms. Yonamine came from the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division's Securities and Enforcement Branch. Prior to that, she was with the Regulated Industries Complaints Office; she has many years of investigative experience.

2. Statistics – Complaints, Requests for Advice

None.

3. Budget

a. FY2017 Operating Budget

None.

b. FY2018 Operating Budget Request

The EDLC reported that she met with the Managing Director and Budget Director. They informed her that there are many competing costs for the budget such as reducing unfunded liabilities in the Employees Retirement System and other post-employment benefits, as well as costs associated with renegotiating collective bargaining agreements.

The EDLC stated that it will be a thin budget year and that the only request from Ethics is to increase the number of licenses for the Mindflash software program, which is still pending.

4. Ethics Training Program

The EDLC explained that 50 Mindflash training licenses were used to launch the ethics training pilot program for the employees in the City Clerk's Office. The City Clerk's Office has a staff of 29, and about half of their staff have successfully completed their training. The deadline for completion is the first week of January. The EDLC also informed the Commission that staff continues to work simultaneously with the Department of Information and Technology ("DIT") to create a software application for use City-wide. The application being created by DIT looks promising and may eliminate costs for Mindflash licenses.

Chair Marks asked if the EDLC received any feedback from staff who had taken Mindflash training. The EDLC responded in the negative. The EDLC explained that staff plans to deploy the pilot program to other small legislative agencies, pending completion of the DIT application. The EDLC stated that there was a lot of interest to switch training from a classroom setting to using desktop computers. The EDLC also stated that staff and DIT are working on solutions for City staff who do not have desktop computers, which is about 4,500 employees.

## 5. Charter Amendments

The EDLC reiterated that EC Charter Amendment No. 2 had passed, and that a Certificate of Results, issued by the Clerk's office, showed the total votes received. A final report from the Charter Commission will be issued.

## 6. Audit

The EDLC stated that the City Auditor recently issued Addendum No. 1 to the Request for Proposal to clarify the outside audit work.

The EDLC also stated that the self-assessment portion of the audit, which she is responsible for, is now due at a later date. The City Auditor plans to deliver all three (3) pieces of the audit (control self-assessment, best practices, and management audit) in December 2017. The EDLC is still awaiting internal deadlines.

### C. Rule-Making

No report.

Chair Marks requested that testimony for Agenda Items D, E and F be heard together since the sole testifier was Dr. Kioni Dudley, who had also submitted these issues for the Commission. Dr. Dudley agreed.

### D. For Decision: Issues Relating to Independent Expenditures Made by Super Political Action Committees ("Super PACs") for the Benefit of a City Officer

1. Do "Independent Expenditures" Made by Super PACs for the Benefit of a City Officer Create a Conflict of Interest Under Revised Charter of Honolulu (RCH) Section 11-102.1(a)
2. Do "Independent Expenditures" Made by Super PACs for the Benefit of a City Officer Create an Interest That Might Reasonably Tend to Create a Conflict With the Public Interest Requiring Disclosure Under RCH Section 11-103 Any Time Such Conflict Becomes Apparent?

Chair Marks asked Dr. Kioni Dudley to testify.

Dr. Dudley thanked the Commission for giving him the opportunity to appear and testify. He stated that a super-PAC's support through independent expenditures must be declared as a conflict of interest. He took issue with a January 27, 2016, city council vote that granted final approval of Bill 23 (2015), which extended the one-half percent (0.5%) rail surtax. Seven (7) Councilmembers voted "yes" and Ann Kobayashi and Ikaika Anderson voted "no."

Councilmembers (“CMs”) Elefante, Fukunaga, Pine, Manahan and Menor, received large amounts of money from Forward Progress super-PAC, or Aikea UNITE HERE super-PAC in the recent election period. Dr. Dudley further stated that the large contributions probably decided their elections, and were certainly large enough to create a conflict with the public interest. Dr. Dudley also stated that those CMs failed to disclose the contributions as required by Revised Charter of Honolulu (“RCH”) Section 11-103, which requires full disclosure in writing before the vote was taken.

Dr. Dudley asked the Ethics Commission to opine that super-PAC support creates a conflict of interest, and that it must be declared before a councilmember votes on a bill favoring the interests of the super-PAC. He requested that the Commission declare the votes of the five (5) councilmembers at the three (3) full council hearings invalid. Dr. Dudley continued that because five (5) members constitute a majority of the Honolulu City Council, Bill 23 (2015) should also be declared invalid.

Dr. Dudley explained that super-PAC support was not covered by the Revised Charter of Honolulu Section 11-102 or its exemption clause, since super-PAC support via independent expenditures for candidates is not a campaign contribution. Although Super-PAC support is beyond the reach of Section 11-102, it clearly creates a conflict of interest because of the large amount of support received by the candidate. Therefore, the requirements of Section 11-103 do apply. Section 11-103 requires any official who possesses or acquires interest as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing.

Dr. Dudley gave the Commission an example as to conflict of interest, and informed them about Mayor Caldwell receiving three and a half million dollars (\$3,500,000) in super-PAC support from Pacific Resource Partnership (“PRP”), which was three (3) times the amount that former Governor Ben Cayetano received from others. Because of PRP’s contributions, the Mayor was able to win the election. Dr. Dudley further believes that Mayor Caldwell would not be in office today but for PRP’s support. The Mayor knows that he is now obligated to PRP for his position as Mayor, which is definitely a conflict interest.

Dr. Dudley also stated that the same was true with CMs as they receive about the same proportion of support from super-PACs as the Mayor. The CMs know that they are in office because of the support. The CMs have an overwhelming obligation to support what the super-PAC wants in order to win the next election. Dr. Dudley further testified that this was a major conflict of interest with the public good, and 11-103 requires that it be declared.

Dr. Dudley informed the Commission of the following contributions:

- CM Elefante received \$105,000 from PRP Super-PAC;
- CM Fukunaga received \$94,562 from PRP;
- CM Pine received \$90,000 in support; and

- CMs Menor and Manahan received about \$60,000 each from PRP in the 2012 election.

Dr. Dudley opined that the foregoing was certainly enough to create an obligation and an interest that might be contrary to the public interest. Dr. Dudley contends that the councilmembers were aware of what the super-PACs wanted when they voted, since PRP and Aikea Unite Here Local 5 submitted strong testimony during the hearings.

Dr. Dudley maintains that each of the councilmembers had an obligation to investigate what they needed to disclose and believes that if each of them had declared the amount of support from the super-PAC, the press would have covered it, the public would have been riled up, and Bill 23(2015) would have failed.

Dr. Dudley asked that the EC find that all five (5) councilmembers acted in violation of RCH 11-103 by failing to disclose the super-PAC support of independent expenditures and further asked that the Commission declare their votes and passage of Bill 23 (2015) void.

Chair Marks asked Dr. Dudley if he had additional testimony and he confirmed.

Vice Chair Lilly disclosed that he represented Dr. Dudley years ago in a personal injury matter and that there was no current attorney-client relationship. But, in an abundance of caution, he is making the disclosure.

E. For Decision: Are the Conclusions in Advisory Opinion No. 76 (December 21, 1977) Still Correct Under Current Laws?

Dr. Dudley testified that Advisory Opinion No. 76 ("AO 76") was based on an incorrect reading of Sections 11-102 and 11-103 of the Revised Charter of Honolulu that cannot be defended. It eliminates important protections for the people and was also written in 1977, 40 years ago, when it was a completely different world. It is an outdated and flawed document and today it is relied upon by councilmembers and others to hide the mass corruption in City government.

Dr. Dudley informed the Commission that AO 76 distorted the wording and intention of RCH Section 11-102.1(a). Dr. Dudley explained candidates receive gifts from people on both sides of the issue, and most donors are giving with the hope that the candidate will support them.

Dr. Dudley further stated that AO 76 unreasonably extends the gift exemption for campaign contributions to not being a conflict against the public interest, therefore does not require disclosure under RCH Section 11-103. Section 11-103 requires councilmembers and others who have an interest that might reasonably tend to create a conflict with the public interest to make full disclosure, in writing, to the council and in the case of a member of the council, to the Ethics Commission at any time that such conflict becomes apparent. Dr. Dudley noted that there is no language in Section 11-103 that exempts disclosure of campaign contributions.

Dr. Dudley informed the Commission that AO 76 was wrong to state, “in case of soliciting and accepting campaign contributions, since such campaign contribution and acceptance have been made, an exception to the standards of conduct could be observed by elected officials, there is no necessity to file a disclosure as required under RCH 10-103.” Dr. Dudley believes that it is incorrect to extend the exemption for soliciting and receiving campaign contributions to an entirely different situation, which is to have an interest and conflict with the public interest.

Dr. Dudley further stated that AO 76 was written to address one donor but today there is an entire construction industry, unions, developers, bankers, contractors, architects, lawyers, lobbyists, organized to corrupt the City Council for their own profit. Instead of just one high-rise building, there is also the rail, the largest and most expensive project ever attempted in the State and the 12,000-home Ho’opili project, which is the largest housing development in history.

Dr. Dudley continued stating that the public good has become completely ignored and irrelevant. The councilmembers only consider what the construction industry wants next. If councilmembers had been forced to state that they had all received between 43 percent (43%) and 91 percent (91%) of their campaign contributions from people who would profit directly from their vote on Bill 3 approving Ho’opili, the news media would have been all over it, and the people of the island would have been enraged and the current council approval for Ho’opili project would not exist, but neither he nor the public knew about it. Although it was disclosed in the Campaign Spending Commission records, it had taken Dr. Dudley many months of researching the records in order to discover the enormity of the problem.

Dr. Dudley asked that the Commission replace AO 76 with rules that will actually regulate the modern situation.

Chair Marks asked if there were any questions for Dr. Dudley.

Commissioner Adler asked Dr. Dudley whether there was a distinction, in both testimonies, between conflicts of interest and appearances of conflicts of interest. Dr. Dudley confirmed that there was a distinction between the two. A conflict of interest is something that you can prove legally and the appearance is something that you can draw the conclusion because you can’t really prove it.

Commissioner Adler also asked Dr. Dudley if he knew of any other state, city, or Federal ethics laws or rules that explicitly require full disclosure of contributions from PACs, as a conflict of interest. Dr. Dudley responded that he didn’t know of any and was not familiar with the laws and how to search for it. He further explained that the super-PACs were very recent in history, and that he didn’t know if there were any laws that he could refer to, since it is so recent.

Commissioner Amano asked Dr. Dudley for clarification on whether he was acting in the capacity of the President of Friends of Makakilo, and Dr. Dudley confirmed. Dr. Dudley explained he had wanted to protect himself as an individual and that he was testifying as the head

of an incorporated entity and also did his very best to be as careful as he possibly could, since there could also be someone who could retaliate against him.

Commissioner Suemori asked Dr. Dudley how would he discern when there's an interest that needs to be disclosed. Dr. Dudley responded that it would be something for the EC to decide, and Commissioner Suemori agreed. Commissioner Suemori stated that there were two requirements: the actual disclosure and the decision whether it was a conflict. Dr. Dudley responded that you get to a point where the person becomes dependent on the campaign contribution. Commissioner Suemori asked how would it be determined. Dr. Dudley stated that it was something that the Commission should look at, but if a person gets 20 percent (20%) of their money from this segment, he doesn't see that as a conflict. Commissioner Suemori informed Dr. Dudley that since he was asking for a judgment on dependency and economic need, it would be a stronger argument by saying independent expenditures require a disclosure of interest rather than create a conflict of interest, and Dr. Dudley agreed. Commissioner Suemori also responded that everything should be disclosed, especially gifts.

Vice Chair Lilly addressed Dr. Dudley's request for the Commission to invalidate a vote that was cast without disclosure of a conflict, and stated that the Commission did not have authority to come to that conclusion, but the Supreme Court could. The EC determines parameters of conduct but does not decide whether or not the result of an ethics law violation invalidates a vote. Vice Chair Lilly continued stating that there was nothing in the Charter that gave the EC authority to make those types of decisions. Dr. Dudley responded that it was nondisclosure in one case that resulted in the declaration of invalidity, and Vice Chair Lilly responded that it was decided by the court. Dr. Dudley continued that there was something in the newspapers a year or so ago, about some vote of the City Council being declared invalid, but didn't know whether it was declared by the EC and the former executive director; Vice Chair Lilly responded that it wasn't the EC.

Dr. Dudley informed the Commission that they plan to take the matter forward and asked if there was anything that they could get from the Commission, since it would be supportive and extremely valuable to them.

Chair Marks asked if there were other questions, and since there were none, moved on to the next item on the agenda.

Commissioner Amano thanked Dr. Dudley for his work on the particular issue and for calling their attention to the issue and that it was well done, and Chair Marks agreed.

F. For Decision: Issues Relating to a Councilmember's Receipt of 40 Percent or More of Campaign Contributions by a Special Interest Group

1. Whether a Councilmember's Receipt of 40 Percent or More of Campaign Contributions by a Special Interest Group Creates a Conflict of Interest When the Councilmember Has to Make Official Decisions Affecting the Special Interest Group; and



2. If Question 1 is Answered in the Positive, Were the City Council's Five Votes Approving the Ho'opili Project (Bill 3, 2015) Invalid?

Dr. Dudley testified that he submitted to the Commission a 52-page report, including 170 pages of exhibits. This report focused on alleged violations of RCH Sections 11-101, 11-102(c), and 11-104.

Dr. Dudley informed the Commission that his documents show how all City councilmembers failed to hold their office for the benefit of the public; failed to recognize that the public interest was their primary concern; and failed to faithfully discharge the duty of their offices regardless of personal considerations. It also showed how all City councilmembers, contrary to law, have used their official positions to secure special consideration, treatment, advantage or privilege beyond that which is available to every other person for themselves, and for the construction community.

Dr. Dudley also explained that councilmembers receive a huge amount of support from the construction community who would profit directly from a "yes" vote on Ho'opili. This support creates such a great obligation to those donors and such a great dependence for similar funding in upcoming elections, such that it actually prohibits objectivity, which is a prerequisite for fair, ethical, and valid decision-making and voting.

Dr. Dudley reviewed councilmember campaign financing. His study consisted of 83 pages of exhibits showing all of the donations received by the councilmembers from the period of January 1, 2012, to December 31, 2014, with the donations from entities that would profit directly from a "yes" vote on Ho'opili, which was highlighted in yellow. They also added-in support received from super-PACS and showed the overall percentage of campaign support from entities that would profit directly from a "yes" vote on Ho'opili.

Dr. Dudley's exhibits showed that Councilmember Brandon Elefante got 91 percent support, Councilmember Kimberley Pine got 82 percent, Councilmember Ron Menor – 72 percent, Councilmember Ikaika Anderson – 72 percent, Chair Ernie Martin – 59 percent, Councilmember Trevor Ozawa – 51 percent, Councilmember Carol Fukunaga – 56 percent, Councilmember Joey Manahan – 46 percent, and Councilmember Ann Kobayashi – 43 percent.

Dr. Dudley further testified that he then looked for collusion in the construction community and showed charts of donation patterns from various large developers and unions which demonstrated such repeated patterns of similarity that it would be difficult to deny that there was extremely wide-spread interconnected giving. It was apparent that the industry effort was focused on buying control of decision-making on all construction issues throughout City government. They also showed actions of councilmembers that demonstrated that they understood and agreed to their part of the deal and that all were conscious on all sides of the unspoken, but very real quid pro quo.

Dr. Dudley stated that Councilmembers were not willing to hear the problems, weigh the merits of the project, and decide if there was benefit for the public at large. They also refused to be confronted with serious substantiated problems that would give them problems in voting to approve the project.

For example, Dr. Dudley sent a very important letter to each councilmember, informing them that Developer D. R. Horton was noncompliant in its application for zoning prior to the City Council voting on Bill 3. Only an open-minded and clear-thinking councilmember would have realized that the problem needed to be solved before the measure could be passed by the Council. The Council would be putting the City in jeopardy by not looking into the validity of the application. Dr. Dudley did not receive a response from any City councilmember.

Dr. Dudley also informed the Commission that at the first Zoning Committee meeting on Ho'opili, the Committee Chair gave the developer forty (40) minutes to extoll the glories of the project, while giving Dr. Dudley, the recognized leader of the opposition, only three (3) minutes to speak of the great problems. Dr. Dudley stated that he mistakenly thought that if the councilmembers knew enough facts, they would vote against the project. But over three (3) months of hearings he sent seven (7) long emails and only received one (1) one-lined response.

While the hearings were proceeding, Dr. Dudley conducted more in-depth study and discovered that the critical traffic impact analysis report had actually been falsified and that it was based on grossly distorted population and vehicle numbers, and had thus come to completely false conclusions. Less than half of the houses to be built on the West side and their cars had been included in the report. Time in rush-hour traffic for many tens of thousands of Westside commuters would double. Fearing that they would not read his material, he had thirty-one (31) community leaders co-sign the letter, but no response was received from any of the councilmembers.

Dr. Dudley further stated that there were extremely embarrassing articles published by Pacific Business News that stated how Developer D. R. Horton was moving ahead, selling or giving away property for purposes strictly forbidden under current zoning. These articles told the world that D. R. Horton controlled the Council, and that the Bill 3 decision was absolutely assured to be returned in their favor.

Dr. Dudley testified that he wrote to the Council after each article came out. No councilmember responded or made any effort to speak up for the independence of the Council or to scold D.R. Horton for repeated public humiliation of the Council. The Council was so deeply obligated that they could not make any move on their own; there is evidence of quid pro quo on both sides.

Dr. Dudley also testified that the material he sent to the Commissioners showed that the Council was aware of the needs of the people. While Council hearings would usually get written testimony and are poorly attended, large numbers of people wrote testimony and spoke in opposition to the project at the five (5) hearings. But the construction community

was also very present, pushing their wants through lobbyists visiting and submitting testimony for each hearing. Union leaders, developers, and contractors showed up at every hearing, telling the Council that they must vote for the project. Unions brought huge numbers of on-the-bench laborers to every hearing. They dressed them in pro Ho'opili t-shirts and had them fill seats and line the walls.

Dr. Dudley concluded that it was his contention that the average fair-minded individual could conclude that no councilmember had the independence of judgment in the performance of their duties that is required in 11-102. They no longer have the objectivity, the unobligated thought and freedom to choose all options, and the things that are basic to fair, ethical, and valid decision-making. Law required them to hold their positions for the benefit of the public, and recognize that the public interest is their primary concern and faithfully discharge the duties of the offices regardless of personal considerations.

Dr. Dudley requested that the Commission require the councilmembers to not have any financial interest direct or indirect that might tend to impair their independence of judgment and performance of their official duties; he also requested that the Commission require the councilmembers not to use their official positions to secure or grant special consideration, special treatment, advantage or privilege, exemption to themselves or any other person beyond that which is available to everybody else.

Dr. Dudley further asked that the Honolulu Ethics Commission find that all members of the Council had broken the law, because they had voted "yes" in order to satisfy their obligation to a segment of society that had given them large sums of money, and asked that all votes on Bill 3 be declared invalid.

In Part 2 of his argument Dr. Dudley stated that the CMs failed to disclose conflicts of interest they had acquired under RCH Section 11-103, and since they didn't declare the conflicts, their vote was invalidated.

Commissioner Suemori commented that his underlying premise created a problem, since an elected official would have to be someone who was independently wealthy or be on salary, because if he didn't have sufficient salary, then all campaign spending would be government expenditures.

Vice Chair Lilly responded that all they needed to do was disclose, and Commissioner Suemori agreed. Vice Chair Lilly then clarified that if it's disclosed then they could still vote; Commissioner Suemori disagreed and stated that they have to pass on voting. Commissioner Suemori contended that if you disclose then there would be a conflict. Vice Chair Lilly then clarified that if you receive a contribution and if it's a conflict, with respect to a matter that would come before the Council, then you need to disclose it and thereafter still vote on it.

Commissioner Suemori asked Dr. Dudley if he agreed with Vice Chair Lilly. He confirmed and stated that if the campaign contributions had been disclosed, then there could be a reaction.

Commissioner Adler asked that presumably the Council itself could make a decision on recusal.

The ALC interjected and informed the Commissioners that if they had any legal questions, they could go into executive session. Commissioner Suemori responded that they had questions for Dr. Dudley about his position.

Dr. Dudley clarified that the law states that they must vote, and that they cannot be exempted from voting.

Vice Chair Lilly's understanding was that 11-102 exempts campaign contributions, but 11-103 says that if you have a conflict then you have to disclose it and then you can vote, even if you have a conflict, as long as you disclose it. Commissioner Suemori understood and also asked Dr. Dudley if he agreed, and Dr. Dudley stated that it was the law.

Dr. Dudley further stated that if the councilmembers were to disclose the huge amount of donations and there were obligations that came with it, and the people could understand what was going on and to be able to react, which is the whole purpose of disclosure, so that the public could be made aware.

Vice Chair Lilly clarified further that if you don't disclose a conflict and you vote, there's a Supreme Court decision that states that the vote would be invalid, and asked if Dr. Dudley agreed, and he confirmed.

Chair Marks asked Dr. Dudley if he was suggesting that anything in his complaints was other than a lawful campaign contribution act. Dr. Dudley agreed that there were no allegations of unlawful campaign contributions in his complaints and that he wasn't happy with the law.

Chair Marks thanked Dr. Dudley and then asked if there were any further questions for Dr. Dudley.

**Chair Marks requested a motion to go into executive session to deliberate and consult with its attorneys. It was moved by Vice Chair Lilly, seconded by Commissioner Adler, and unanimously carried to approve the motion to go into executive session.**

#### **RETURNED TO OPEN SESSION AT 1:10 P.M.**

In regard to Agenda Item D:

**Chair Marks requested a motion that the Commission decline any action regarding the nullification of the CM votes due to an alleged failure to disclose independent**

**expenditures by the super-PACS's because the Commission has no jurisdiction to nullify City Council votes. It was moved by Vice Chair Lilly, seconded by Commissioner Yuen.**

Chair Marks then asked if there was any discussion. Vice Chair Lilly added that in his view, it was an independent contribution that didn't go to any particular individual, since there was no receipt and that it wouldn't come under their jurisdiction.

**Chair Marks asked if there was any other discussion, and since there was none, she called for a vote. The motion was carried unanimously.**

In regard to Agenda Item E:

**Chair Marks asked for a motion finding that Advisory Opinion No. 76 (December 21, 1977) is still correct under current laws, but the Commission would consider drafting a new advisory opinion and also consider rulemaking, pursuant to 11-103. It was moved by Vice Chair Lilly and seconded by Commissioner Suemori.**

Chair Marks asked if there were any discussion, and Vice Chair Lilly commented that Section 11-103, did not appear on its face to exempt campaign contributions, and that it required disclosure if a person acquiring an interest as might reasonably tend to create a conflict with the public interest and anticipated that the Commission would review that part of their analysis. Chair Marks added that it would be prospective and Vice Chair Lilly confirmed that whatever they decide would be prospective but it would not invalidate any votes. Commissioner Suemori asked if it would go through rulemaking and Vice Chair Lilly responded that it would go two ways, through advisory opinion and through rulemaking. Chair Marks commented that rulemaking takes longer.

Chair Marks asked if there was any further discussion, and Vice Chair Lilly asked for clarification on issuing the advisory opinion and if it would take a month, and the ALC confirmed.

Chair Marks asked if all were in favor, and it was unanimously carried to approve a motion that Advisory Opinion No. 76 (December 21, 1977) is still correct under current laws, but the Ethics Commission would consider coming up with a new advisory opinion and to also consider rulemaking, pursuant to 11-103.

In regard to Agenda Item F:

**Chair Marks asked for a motion to the effect that the Commission would not have the expertise to determine what percentage of campaign contributions creates a conflict of interest. Further, a lot of the concern dovetailed with looking at the Advisory Opinion and potential rulemaking under Charter Provision 11-103. It was moved by Vice Chair Lilly and seconded by Commissioner Suemori.**

Chair Marks asked if there was any discussion, and Vice Chair Lilly commented that Section 11-103 didn't set a threshold so he didn't see that it was in their purview to be establishing a particular threshold when 40 percent may not be appropriate. The Charter simply states that if you acquire an interest that might reasonably tend to conflict with the public interest, that would require disclosure, and there's no threshold.

**Chair Marks asked if there was any other discussion, and since there was none, it was unanimously carried to approve the motion.**

**Chair Marks informed the Commission that there were some issues about whether they could invalidate a vote by councilmembers and asked for a motion to the effect that the Commission did not have authority to declare any votes invalid by the council. It was moved by Commissioner Yuen, seconded by Vice Chair Lilly, and unanimously carried to approve a motion to the effect that the Commission did not have authority to declare any votes invalid by the council.**

### III. Executive Session

- A. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii

No discussion.

- B. For Discussion: Independent Ethics Investigator Retained Due to Conflict of Interest

No discussion.

### IV. For Discussion: Strategic Planning

Commissioner Adler informed the Commission that this was the first of several abbreviated strategy planning sessions, and that the sessions would be taken in a series of steps. If a larger and longer meeting was required during culmination it would be scheduled.

Commissioner Adler called the Commission's attention to a diagram that he prepared on Page 2 of his handout, which was a general flow chart of the pieces of strategy development. To date, he had accumulated some items for them to review, which will include their discussions and potentially a strategy.

Commissioner Adler further stated that the model for the strategy is an 8-10 page document, including sources and that it would be directional with several passes. Commissioner Adler then explained that eventually there would be a draft strategic plan and the Commission should have the public comment on the draft. The draft would include future changes to rules and procedure for a 5-8 year horizon. Much of the plan is reliant upon execution.

Commissioner Adler began the discussion with **Model No. 1, "Clarity & Agreement on**

**the Purpose, Goals and Timing of the Planning Effort.” He wanted to hear the thoughts of the Commissioners, and why a strategic plan is important now.**

- Chair Marks: It’s important now because there is a new executive director and also an opportunity to move forward with what might be best practices.
- Vice Chair Lilly: A Strategic Plan can define the Commission’s vision, obligations, and responsibilities, and to create ways so that they can insure they are carrying out that vision. Also, it is an opportunity to define the Commission, which had never been done before. The Commission is like a Board of Directors setting goals and direction. It would be easier for staff to carry out the Commission’s expectations if they are aware of the Commission’s expectations.
- Commissioner Suemori: When new executive director came on board, the office had gone through an upheaval and the Commission was at a crossroads.
- Commissioner Amano: Wasn’t sure if there was a strategic plan in place, but wants to take advantage of people who have the historical perspectives, such as Vice Chair Lilly and Commissioner Yuen, the ALC, and staff.

Commissioner Adler informed the Commission that they could reach out and interview others in the State Ethics Commission, as well as other who had been on the Commission during the year for historical perspective.

- Commissioner Yuen: To be specific and define the core mission, and once it’s established they could work with it, and to also be flexible with changes and possibly create a mission statement.

Commissioner Adler asked the Commission **what information would they need to really plan ahead for 8 years.**

- EDLC – The EC has good information on statistics from 2010. Prior to 2010, statistics were kept differently and were not comparable. Ten years of data is always best for trending, but we probably have only six.

Commissioner Adler commented that activities, complaints, hearings and all of the Commissions’ functions should be included. Commissioner Adler stated that anyone could provide comments, not just the Commissioners.

Commissioner Adler asked if there was anything else to add or **if there were any assumptions on growth or case load, or if it should stay the same, or other data.**

- ALC – Refer to staff’s Index of Opinions, which includes types of complaints, types of requests for advice.

- EDLC stated that there are intentions to re-do the index, and asked how soon it was needed. Commissioner Adler responded that it would take possibly until the next quarter or finalized by mid-year.
- Commissioner Amano – The index is critical for her, since she was still unaware of staff's work. It is easier for her to comment on what she does know, which is limited to what is presented in the meetings and nothing else. Advisory Opinions and Requests are all known, which includes a lot of background information, but feels that the Commission should be informed of pending investigations and complaints.

Commissioner Adler **asked if the Commission could get briefed or get any information on pending investigations and complaints.**

- Legal Clerk Parker – The Commission cannot be made aware of pending investigations since it needs to be preserved until the potential complaint is brought before the Commission for approval.
- Commissioner Amano – Expressed her concern about not knowing why the Commission is not able get any information on pending investigations and complaints, and was unaware of the reason why or the consequences and who made the decisions, and asked for the rule that states that the investigations are confidential, and wanted it articulated. Are they self-initiated investigations or are they investigations from the outside?

Commissioner Adler commented that staff **knows if there are self-initiated complaints or whether they are initiated from the outside.**

- EDLC/ALC/Legal Clerk Parker – Staff has the information and it has been integrated with more detail.
- Commissioner Amano – Would like to know if a particular case would have a number of investigations ongoing and that one in particular were all self-initiated. As a Commissioner she is worried about the workload and that she needs to be made fully aware. The Commission needs to know more.

Commissioner Adler stated that it had a lot to do with role clarification (sometimes the EC is acting as a tribunal, sometimes they're investigating, and sometimes performing a prosecutorial role), and how they want it to be down the road, probably needs revisiting.

**What's important is if there's data information that is pertinent, other than getting briefed.**

- EDLC – There is data and a lot of it can be made available. Some of that data already goes directly to the Chair. Whether that should be more widely disseminated, it's always the balance of what is confidential versus non-confidential.
- Commissioner Amano – It happened in the last seven months when the Chair had to step into the office.



- Chair Marks – Before that there was very little.
- Vice Chair Lilly – The Commission is a volunteer group so there is only so much time to be devoted, but on the other hand they are responsible for the performance and responsibilities of the Commission and staff. But, staff are prosecutors and the Commission are decision-makers in certain capacities, so they have to have some separation.
- Commission Amano – Unless the staff's prosecutorial function is eliminated.
- Vice Chair Lilly – It needs to be part of the strategic discussion.
- Commissioner Suemori – Part of the strategic discussion should be whether the Commission or the public initiate the complaint.
- Commissioner Amano – Resources will come into play. At some level the policy decisions will need to be made, but also they will need the information.

Commissioner Adler responded and stated that the question will be a balance or under what conditions.

- Chair Marks – There needs to be a balance and if you have a complaint from the public or an anonymous complaint over the phone, and in the course of that investigation you find out something else amiss, certainly the Commission or the staff ought to be able to pursue it. But if the staff says they don't have enough to do and had to justify their existence, then there's a problem.

Commissioner Adler informed the Commission that the **central question is if there is data or information, and asked again what are the sources of information they need in order to plan five years ahead.**

- Vice Chair Lilly – The starting point should be the Charter, since it defines the Commission;
- Commissioner Yuen – Doesn't think they can be specific about what they need right now since a lot depends on the EDLC. If there's an adjustment to be made, and they feel as a Commission there is not enough information, there should be adjustments to keep them informed. It will be modified along the way.

Commissioner Adler referred the Commission to his Model #2 – **Situation Analysis, Data Gathering, and Information Collection.**

- ALC – Asked what additional information the Commissioners needed in order to understand what staff does. Perhaps it's not being presented in a way that's helpful. ALC stated that she submits a lot of information for the meetings by preparing work

reports, case status reports, and keeping time to the tenth of an hour that is divided into different categories. The EDLC imports the pie chart into her EDLC Memo so the Commission can see how much time is spent on various matters. Staff also has, for internal use, a more detailed list of the number of cases, cases outstanding, cases closed, as well as how many outstanding RFAs and how many cases might be lit-hold matters. Would the Commission want a detailed report? Currently, the Commission is given a summary in the EDLC report that generally states the number of open cases, cases closed, etc. but it doesn't go into additional detail, but it could be done if the Commission needs it.

- EDLC – In general, there seems to be a lack of transparency between the staff and the Commission. Maybe it was previously taken to this level to protect the Commissioners from hearing anything more that they needed to, but it may also have kept the Commission in the dark as to what exactly the staff does.
- Commissioner Amano – It's a decision the Commission needs to make. Her comments may have been addressing the office under the former EDLC.

Commissioner Adler stated that there was no judgment and that the discussion was to set goals.

- EDLC – Staff meets every week, and it takes a lot of time. She and staff go through their program of work, in order to keep track. Everything that the staff does daily is on her weekly staff report list, and everyone responds on issues or upcoming filings or topics.

Commissioner Adler asked if there was a **weekly agenda**, and the EDLC confirmed.

- ALC – Commission needs to take a look at the EDLC's agendas for their staff meetings, which will give them a good idea of what staff does.

Commissioner Adler asked for a sample of the EDLC's agenda and the EDLC responded that she attached her agenda for the first few meetings, as part of the EDLC report, but didn't attach it for December since she didn't think that they needed to see it again. **Commissioner Adler asked the Commission if it would be helpful and the Commissioners agreed.**

- ALC – When it's looked at, there is a lot of work that staff performs each day.
- EDLC – We also created a calendar for processing the meeting materials for each month, for each staff.
- Commissioner Yuen – It may only take a minute for the Commission to request a response, but it may take the staff hours or even days to complete. He asked the EDLC to make suggestions to the Commission and to have an open dialogue.

Commissioner Adler commented that the planning process will be used to create a source document for planning in the future and would be part of a collective learning effort. Commissioner Adler asked if there was any other information or data.

- Commissioner Amano – Do other Commissions have strategic plans and what are their goals.

Commissioner Adler asked if any research like that had been done, and the EDLC responded that the City Auditor was embarking on that work, which was part of best practices. The Auditor is researching like-kind jurisdictions to get a feel of what best practices are for Commissions.

- Legal Clerk Bigornia – We completed a couple projects in the past where the former EDLC asked that she do a blast email to different ethics commissions on various topics. She received responses from Texas and New York (via telephone), for example, and opinions and ideas were exchanged.

Commissioner Adler asked if **other entities that are similar to the EC had strategies** that they could look at and that it may be just a simple outreach.

- Chair Marks – The national organizations could be contacted.

Commissioner Adler also mentioned that the State had embarked on some kind of longer-term development and thinking process, and the EDLC responded that she attended one meeting with the State Ethics Commission. A lot was discussed but they were more specific as to the legislation package they had been putting together. The new director was drafting an omnibus bill and some of the topics discussed were areas requiring clarification. The EDLC continued that the councilmembers had asked about any legislation the EC wanted to introduce. But since the EC will be evaluating its needs introspectively first, and then later, rulemaking might filter into the kind of law changes that should be made.

Commissioner Adler asked for any thoughts **on strategic thinking, strategies, things that are in development, even with the State or other counties, and that part of it is learning to use judgment on things that will bear on the planning they are trying to achieve.**

- EDLC – The audit is moving simultaneously and the results will not be received until December. The City Auditor has a three-part plan with a delivery date of December, and had decided that the earlier parts are all going to be delivered in December. It will happen at the same time during the EC's strategic planning. She will have the preliminary results of her control self-assessment, which essentially asks questions about every program area within the jurisdiction of the Commission.

Commissioner Adler asked if it was sharable with the Commission, and the EDLC responded that it was still in draft form but that she could share it with the Commission.

Commissioner Adler informed the Commission that they could loop back to their discussions and also wanted to take a look at the Model No. 3 – **Specific Assumptions About the Future as they May Affect Enterprise, Political, Economic, Social, Technical and Legal Assumptions they would be making about the future (6-8 years)**, and they assume the cases and the workload would be, and not what they want it to be, but what they think is emerging over the 5-8 years.

- Commissioner Suemori – Repetitive training for ethics. The training would have to be more sophisticated and include more social media and wondered what the population of employees and what the politicians would be like in eight years.

Commissioner Adler asked if anyone had an assumption, and mentioned the Governor's statement of a recession ahead, and some pullbacks.

- Commissioner Suemori – 4,500 employees without a computer, maybe an app would be needed.

Commissioner Adler responded that one of the assumptions is that everyone will have more social media access one way or another.

- Commissioner Suemori – Everyone has a phone and an app will help us complete the training for employees without a computer.
- ALC – Clarified that it's one training every two years.

Commissioner Adler summarized the discussion in that it would need to be wrapped up quantity-wise and depth-wise.

- Commissioner Yuen –The Commission needs to remember that they must be unbiased, independent, and not have any conflicts of interest. But when you think about it there is a big conflict of interest, since they (the Commission) are controlled by the City's budget. The Commission is not an autonomous group.

Commissioner Adler asked if they would know more after they get the data on what happened over the last few years **and if they assume the case load would stay the same, oscillate or spike up, just a raw assumption.**

- Chair Marks – It will go up since the population increases about 10 percent every 10 years.
- Commission Suemori – Gripping level goes up.
- Vice Chair Lilly – When training is done the workload goes up, since people become more aware of the violation and then they report it.

Commissioner Adler asked the Commission to discuss **future assumptions**.

- Vice Chair Lilly – Assuming that they will need targeted detail in training, since some employees do not have computers. Then there's computer staff training, and the council needs a separate training, since they have different issues.
- Chair Marks – Training changes with personnel changes.
- Vice Chair Lilly – Training needs to be done more efficiently.

Commissioner Adler added that another assumption is that training needs would be more differentiated and it would increase in volume.

- Vice Chair Lilly – To the extent that it can be done through computers, it would make the workload go way down. The workload will still be there for those who do not have computers.

Commissioner Adler then stated that it links to Commissioner Yuen's question about resources and then the question of control.

- EDLC – Not just the case load in terms of the numbers of cases, because you could have five easy ones and one bear of a case. More time could be spent on that one bear of a case.

Commissioner Adler commented that the focus would be on 80 percent of the work.

- EDLC – Whether the numbers go up or down, is not necessarily an indication on the workload.

Commissioner Adler stated that the assumption is an 80-20 principal in terms of the pressures and demands.

- Chair Marks – 80 percent of the work is caused by 20 percent of the cases.

Commissioner Adler then stated that it would require that percentage of their time and it turns out that the long history has been about 80-20 percent.

Commissioner Adler asked the Commission about **other assumptions that they would be making and what they thought would have strategic implications** for what they write and develop.

- Chair Marks – Never have the resources that is needed.
- Commissioner Amano – Process for appointment of the members of the Commission would remain the same, all mayoral appointees. There had been talk the last couple years

about some other method. Status quo.

Commissioner Adler then stated that the assumption is the method of selection and appointment would remain the same, but it could be challenged, and Commissioner Amano agreed.

Commissioner Adler **asked if there were other assumptions that are foundational** since it would be revisited as they get into drafting, which will also have attachments that will give much more detail.

- Chair Marks – Need to assume that they need to become political to get better funding and that they need to reach out to councilmembers and keep them informed for budget purposes;
- ALC – The Commission needs to lobby.

Commissioner Adler summarized the discussion and stated that they would have to assert and push and maintain their independence which includes financial stability, and **asked if there were other big assumptions.**

- Commissioner Amano – Assuming staff will grow.
- EDLC – It's tied to the resource question.
- Commissioner Amano – Work is going to increase.
- Vice Chair Lilly – Assuming it's warranted.

Commissioner Adler responded that it will need to be justified, and Vice Chair Lilly responded that it had been justified, and that staff's workload was higher and that the workload of the investigator as compared to any counterpart, is way off the chart.

- Chair Marks – Cannot agree with Vice Chair Lilly since she wasn't sure about the data, and Vice Chair Lilly responded that he was assuming.
- EDLC – Based upon data, a vast majority of staff's time is spent on administration or training. The amount of time left for case load is 25 percent at best, so if you have two attorneys in the office doing 25 percent of time on cases, that tells you right there that there's a backlog.
- Vice Chair Lilly – Asked where should they be putting their work and maybe it shouldn't be 25 percent case load and 50 percent training.
- EDLC – There will be a shift with more time spent and some resources on training and less time spent on cases, even if the case load should go up.

- Vice Chair Lilly – Assumption is they'll be doing more training and hopefully less admin.

**Commissioner Adler asked what they would assume about the media in the next 5-8 years.**

- Commissioner Amano – Always be there and they won't be educated.
- Commissioner Adler – There will always be one or more hot issues and there will always be scrutiny and the media may have less investigative power than they used to.
- Chair Marks – They will always show up when they want to make someone look bad.

Commissioner Adler asked about **assumptions about erosion of public confidence and trust in government and assumes it would increase** and that the Commission would need to operate in that environment.

- Vice Chair Lilly – Part of their existence is to help improve and to help government stay honest so he supposes that part of their role should be to help give the public more confidence, and on the other hand the more work that is done in terms of enforcements feeds the public's perception that the government is corrupt and yet the Commission's role is to help government stay straight and honest.
- Chair Marks – Inviting the press and media to trainings.

Commissioner Adler informed the Commission that this first meeting was the first pass and that his strategic planning will be conducted in small pieces. He needs help from some Commissioners in the drafting, and referred the Commission to Model Nos. 4 and 5, and that it was about what they want and **what will be the big differentiator for them**. Model No. 5 is collateral and it asks what position would the Commission want to be in every which way, and it could be politically, economically, socially, and in every dimension. They will need to work to describe and capture some of them.

## V. ADJOURNMENT

**Chair Marks moved to adjourn the meeting. It was seconded by Vice Chair Lilly, and unanimously carried to approve the motion to adjourn the meeting.**

The meeting concluded at 2:09 p.m.